The Key Largo Wastewater Treatment District Board of Commissioners met for a Commission Meeting at 4:00 PM. Present were Chairman Majeska, Commissioners Norman Higgins, Andy Tobin, Steve Gibbs, and David Asdourian. Also present were General Manager, Margaret Blank, General Counsel, Ray Giglio, District Clerk Carol Walker, and other appropriate District Staff.

Boy Scout Troop #558 led the Pledge of Allegiance.

APPROVAL OF AGENDA
The General Manager moved Item 11, Low Income Assistance up to after Item 4, Loan Refinance and moved the Engineering Report to under Low Income Assistance. General Counsel Ray Giglio added a report on a current court case.

The Board approved the amended agenda unanimously.

PUBLIC COMMENT
Name & Address
Sue Heim, Key Largo

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<td>Document request response inadequate and not user friendly</td>
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<td>Low Income Assistance</td>
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Asked that a decision be made on hold harmless agreement tonight

John Hammerstrom, Key Largo

Hold Harmless Comments Against
Armando Gutierrez, Key Largo
Daryl Swinney, Key Largo
Sue Heim, Key Largo
John Hammerstrom, Key Largo
Jose Jurado, Key Largo
Diane Marshall, Key Largo
Larry Vallee, Key Largo
Ana Jurado, Coral Coast Homeowners Ass.
Nicholas Mulick, Key Largo
Hold Harmless Comments For
Zachary Zurich, Key Largo
Spencer Slate, Key Largo

FINANCIAL REPORT
Audit Presentation
Peter Rosasco answered questions from the Board on the Audit.

Motion: Commissioner Gibbs made a motion to accept the Audit. Commissioner Asdourian seconded the motion.

Vote on Motion

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Motion passed 5 to 0

Loan Refinancing
Peter Rosasco discussed different scenarios to refinancing the District’s Loans. The Board directed Mr. Rosasco to bring back different options in 60 days.

Low Income Assistance
The Board discussed the restrictions on the District and what the District would like to set up concerning sewer bill relief.

ENGINEER’S REPORT
Ed Castle, Weiler Engineering, reported that the bid for the digester should go out in June and it will be a 1 year project.

Commissioner Asdourian asked Mr. Castle to contact Islamorada and have them put out signs before where they have then currently noticing the construction and lane closings.

Hold Harmless Agreement
Commissioner Tobin likes the idea of you being responsible for what you do and we are responsible for what we do. He feels that the statement that the District is not responsible for its own negligence should be removed.

Commissioner Gibbs discussed the hold harmless agreements that the District has signed with other entities, in good faith to protect everyone in the District. He would like to see a compromise that protects the District.

Commissioner Higgins would like the District to forget the hold harmless agreement.
Commissioner Asdourian would like to see a happy medium or throw the hold harmless agreement out.

Chairman Majeska talked about only giving a one year warranty with the grinder pump and then the property owner has to maintain the pump. This would allow the hold harmless agreement to be removed.

**Motion:** Commissioner Higgins made a motion to drop the hold harmless agreement. Commissioner Asdourian seconded the motion.

**Vote on Motion**

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Motion failed 2 to 3

Board directed Ray Giglio to work with Nick Mulick to find a middle ground and work on a draft hold harmless agreement,

*Time Limit for Hold Harmless Agreement*

The Board removed this item from the agenda.

**BULK ITEMS**

**RESOLUTION NO. 15-05-13**

A RESOLUTION OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT APPROVING THE REMOVAL OF FOUR TAX PARCELS FROM THE 2007 NON-AD VALOREM ASSESSMENT WHERE THE ASSESSED VALUE IS BELOW THE THRESHOLD FOR WHICH A TAX BILL IS GENERATED BY THE MONROE COUNTY TAX COLLECTOR; AND PROVIDING FOR APPLICABILITY AND AN EFFECTIVE DATE.

**RESOLUTION NO. 16-05-13**

A RESOLUTION OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT APPROVING THE REMOVAL OF THREE TAX PARCELS FROM THE 2008 NON-AD VALOREM ASSESSMENT WHERE THE ASSESSED VALUE IS BELOW THE THRESHOLD FOR WHICH A TAX BILL IS GENERATED BY THE MONROE COUNTY TAX COLLECTOR; AND PROVIDING FOR APPLICABILITY AND AN EFFECTIVE DATE.

**RESOLUTION NO. 17-05-13**

A RESOLUTION OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT APPROVING THE REMOVAL OF FIVE TAX PARCELS FROM THE 2009 NON-AD VALOREM ASSESSMENT WHERE THE ASSESSED VALUE IS BELOW THE THRESHOLD FOR WHICH A TAX BILL IS GENERATED BY THE MONROE COUNTY TAX COLLECTOR; AND PROVIDING FOR APPLICABILITY AND AN EFFECTIVE DATE.

*EDU Adjustment Mrs. Mac’s Kitchen II*
Motion: Commissioner Asdourian made a motion that at any time that the District removes a property from the Assessment Role without being asked to by the property owner they will notify property owners by certified letter. Commissioner Tobin seconded the motion.

Vote on Motion

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Motion passed 5 to 0

Motion: Commissioner Tobin made a motion to approve Bulk Items. Commissioner Gibbs seconded the motion.

Vote on Motion

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Motion passed 5 to 0

FINANCIAL REPORT

Pending Payments

Motion: Commissioner Gibbs made a motion to approve the Pending Payments of May 21, 2013 contingent upon the availability of funds. Commissioner Higgins seconded the motion.

Vote on Motion

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Motion passed 5 to 0

Increase in Property Insurance Premium

The Board tabled this item.
OPERATIONS REPORT
Generator Louvers

Motion: Commissioner Asdourian made a motion to authorize the General Manager to execute the acceptance of the proposal from Savannah Trims for the purchase of rain proof louvers for the plant emergency generator in the amount of $12,521. Commissioner Gibbs seconded the motion.

Vote on Motion

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Motion passed 5 to 0

LEGAL COUNSEL REPORT
Legal Counsel Contract
Tabled

Grievance Policy
This item will be brought back to the June 11 meeting

RESOLUTION NUMBER XX-YY-ZZ
A RESOLUTION OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT RETIRING RESOLUTION NO. 16-10-10 REGARDING MONTHLY RATES AND CHARGES FOR WASTEWATER COLLECTION, TRANSMISSION, TREATMENT, AND DISPOSAL AND AMENDING THE KEY LARGO WASTEWATER TREATMENT DISTRICT RULES AND REGULATIONS; AND PROVIDING AN EFFECTIVE DATE

Paul Christian explained the changes that are being made by the resolution. This item will be brought back to the June 11th meeting.

Mr. Giglio stated the court case with Sal Zappulla has been settled.

GENERAL MANAGER'S REPORT
Commissioner’s Compensation
Ms. Blank informed the Board that the Legislation establishing the cost of living increase has been approved.

COMMISSIONER’S ROUND TABLE
Chairman Majeska told the Board that Florida Representative, Holly Raschein will be calling a summit meeting with all the parties in Monroe County that have anything to do with the $50 million from the State next year.
ADJOURNMENT
The KLWTD Board adjourned the Board Meeting 7:45 PM.

The KLWTD meeting minutes of May 21, 2013 were approved on June 4, 2013

Chairman Majeska

Carol Walker, CMC District Clerk
May 13, 2013

Mr. Natalio Abrudsky
107 Coastal Drive
Key Largo, Florida 33037

Re: Easement Grant – Hold Harmless Clause
Key Largo Wastewater Treatment District

Dear Mr. Abrudsky:

In reference to the above captioned matter and in response your enquire, please be advised as follows.

Upon careful review of the documents forwarded by you to our attention, it is our legal opinion, that the provisions contained in the Hold Harmless Clause, as presently drafted, are too broad in nature and may create an unnecessary exposure and unlimited liability, now or in the future, to the property owners of the area affected by the proposed pipeline, grinder pump and appurtenances.

Further, it is also our legal opinion, that the Hold Harmless Clause as presently drafted, may negatively affect the present and/or future commercial value of the real properties in question, due to the undefined and broad financial and otherwise unforeseen consequences, that may result from any present or future claims, demands, actions and causes of action whatsoever, against the real properties covered by the Clause.

If you have any further questions, please do not hesitate to contact the undersigned at your convenience.

Sincerely,

Armando Gutierrez, Esquire
AG/Ih
To whom it may concern,

I am the homeowner of 201 N. Ocean Drive in the Gulfstream Shores addition in Key Largo. Our property is in the proposed area where the grinder pump stations are to be installed to meet the State of Florida regulations. My concern is the "hold harmless" paragraph. I am not sure why the District feels this is necessary to include this into the Contract with homeowners. The contractors doing the work will be licensed, insured, and most likely bonded. With that said, why is there a need for homeowners to "hold harmless"? Why does the board feel the need to be "held harmless" for an easement? I am a sewer contractor in Indiana and I have installed several hundreds of these grinder pump stations exactly like the ones proposed for the Key Largo residents. Most all of these pumps I have installed were in easements and at no time were there ever hold harmless agreements included in the contracts. I think this is a stumbling block for homeowners. This could adversely affect the sale of a property as well as the value of the property. If your concern is due to unmarked or unknown private infrastructure that could be damaged during the installation, simply put a clause in to cover that. There is no need to attach a "hold harmless" clause that is attached to the deed forever. Homeowners should be responsible for locating their private infrastructure and accept responsibility if they didn't before something was damaged.

I hope the Board will reconsider this issue and revise their "hold harmless" agreement to be more specific rather than so broad. I feel that the way it is written you are opening the door to frivolous lawsuits as well as possible financial concerns at the time of resale.

Thank you for your time.

Sincerely,
Daryl Swinney
I am John Hammerstrom  
115 Coastal Drive in Key Largo.

The hold harmless clause in the District’s Easement Grant is a serious matter for approximately 150 grinder-pump customers. Many don’t yet realize just how serious it is.

Elected Commissioners are busy people who need to hear both sides of the issues.

In this case, you have NOT been provided the balanced, objective opinions that you and your customers deserve.

For example, at your April 9 meeting, you heard that only one person objects to the hold harmless clause, which is clearly false; at your May 7 meeting, you heard that the District is delivering a gift when they install a grinder pump, in stark contrast with at least three District Resolutions, 37-05-12, 63-08-12 and 14-05-13, stating that the program is in the District’s best interest; and you’ve been told the easement grant “hold harmless” clause is reasonable and customary despite at least 5 independent attorneys arguing otherwise.

You should have been told that the Aqueduct Authority—with 75 years of utility experience—did not include a “hold harmless” clause in their 3,000 grinder-pump easement grants, that in spite of your more-than-adequate insurance and statutory protection, you are shifting what is at most a tiny institutional risk on the District’s part to homeowners, where it becomes a very large personal risk. Furthermore, the potential adverse financial impacts have not been evaluated and disclosed by your staff to either you or your customers.

You’ve been told that 50+ easement-grant signers are “very happy.”

How many of the “happy” customers read the troublesome paragraph carefully and consulted their lawyers, realtors or insurance agents?

You have many choices that include:

1) Do nothing and hope that none of the remaining 100 grinder-pump customers reads the easement grant carefully and consults their attorney, realtor or insurance agent.

2) The scorched-earth alternative - abandon the board’s long-standing commitment to your grinder-pump customers.

3) Remove the “hold harmless” clause from the easement grant.

Removing the hold harmless clause would be simple and fair. I respectfully request that you unanimously vote today to do so.
Dear Mr. Jurado:

This letter is in response to your request in obtaining insurance coverage with the proposed easement agreement, there are some non-admitted carriers, I have listed below the differences between a Non-Admitted and Admitted carrier:

Admitted: Has filed with and subject to the laws and regulation of the state they are admitted in. Also, means that in the event of insolvency the state WILL step in and make good on claims and premium remuneration if applicable (Simplified version)

Non-Admitted: Has not filed with or subject to the laws and regulation of the state they are admitted in. Also, means that in the event of insolvency the state WILL NOT step in and make good on claims and premium remuneration if applicable (Simplified version)

Non-Admitted carriers can provide us with a Liability coverage in light that the admitted carriers do not like the language in the proposed easement agreement from Key Largo Wastewater Treatment District that has a "hold harmless" agreement. This insurance comes at a premium due to the fact that you will need a waiver of subrogation endorsement added your policy.

I'm waiting for a response from CITIZENS PROPERTY INSURANCE CORPORATION on this issue. Some of the admitted carriers that we have contracted with are reluctant to provide a written answer to your inquiry because every incident is unique in nature and different facts have to be accounted for and reviewed by their legal department. But, the overall feedback has been that you could incur personal financial liability and gap in coverage, if you decide to sign this easement agreement with the hold harmless.

Jorge Sanabria
Agent
May 20, 2013

John Hammerstrom
115 Coastal Drive
Key Largo, FL 33037

Re: Key Largo Wastewater Treatment District Hold Harmless Grant of Easement

Dear John,

As you know I have been a Realtor in the Upper Keys for 40 years. In my practice I have never been made aware of any utility requesting a Grant of Easement with such a “Hold Harmless” clause running in perpetuity with a property. The law would require that prospective buyers of homes in Coral Coast be made aware of the Easement Grant and the “Hold Harmless” clause prior to closing. Due to the broad scope of the “Hold Harmless” clause and the District’s ability to amend it in the future, I feel it would interfere with the sale of the Coral Coast properties; thereby, negatively affecting the value.

Thank you again for all the countless hours you have spent overseeing the wastewater treatment issue for all of the Coral Coast owners.

Sincerely,

Sharon Nyman
Broker Associate
Our attorneys sent a letter to Carol Walker, District Clerk, on April 30, 2013 and asked that she disseminate the correspondence to the commissioners of Key Largo Wastewater Treatment district.

Our attorneys felt “that owners being asked to sign an easement agreement prior to the installation of a grinder pump is not unusual. Property owners are often asked to grant utility easements before utilities are installed on their properties, or are subject to utility easements given by prior property owners. What is unusual about the easement agreements that owners of Residential Unique Property are being asked to sign is that these agreements are also asking the homeowners to agree to indemnify the district for the negligent actions of its own contractor/employees.” They go on to say that in an effort to be open-minded they reviewed several utility easements to see if this was common or even an occasional provision in an easement grant. They were unable to find a single easement that contained such a provision.

The closest they could find to a similar provision is the occasional term of a contractor agreement that the homeowner releases the contractor from liability for injury to the homeowner’s property. Even in those situations, the hold harmless only applies to injury to the homeowner’s own property, not to injuries of third parties caused by the Contractor’s negligence. Nowhere had they seen in their 25 years of practice a homeowner asked to agree to become solely legally responsible for the negligent actions of a contractor before work could be performed.” The position this puts us in we believe is both unreasonable and unfair. The district is forcing us to have the work done by outside contractors at a much higher cost to avoid the ramifications of signing the proposed agreement as it reads
now. The short-term savings are far outweighed by the long-term exposure from potential loss of insurance coverage and lost property value.

Our Insurance representative advised by email today not to sign the easement contract as written.

Utility easements are intended to ensure access by the utility provider for the limited purposes of repairing and maintaining its equipment. I would argue that the KLWTD is in a far better position to supervise its own staff than I as a property owner. I respectfully request that any reference to the assumption of responsibility by the homeowner for the actions of the KLWTD be deleted from the utility easement.

Thank you.

Larry & Janye Vallee
97220 Overseas Hwy
Key Largo, FL 33037
305.853.0098
May 16, 2013

Via Electronic mail
Mr. Jose Jurado
108 Coastal Drive
Key Largo, FL 33037

Re: Easement Grant-Hold Harmless
Key Largo Wastewater Treatment District

Dear Mr. Jurado,

In regards to the above referenced matter, please be advised that it is our legal opinion that you should not execute the Easement Grant as it is currently drafted.

The Hold Harmless Clause is extremely broad in nature and may result in negative ramifications to you, any future purchaser of your home, and ultimately the entire community. Contrary to the representations made by Mr. Giglio it is not customary to include such a clause in an Easement Grant. A clause of this nature may result in difficulties obtaining adequate insurance and as a result bank financing of the properties subject to this easement.

As an attorney and Florida Realtor, I am extremely aware of the effects this may cause now and in the future. Aside from the liability you will be exposed to in the event of any unfortunate incident arising from or involving the grinder pump, a prospective buyer will be made aware of this easement and the hold harmless clause. The prospective buyer will be subject to this release upon closing on your property. This will appear in all title searches and title commitments. Your prospective buyer will need to procure insurance that will agree to provide coverage in this extraordinary circumstance. This will likely be difficult or extremely costly for the prospective buyer and may result in the loss of the sale. This in turn will cause a reduction in your property’s value and those with the same easement having a negative impact on all property values in the area.
This is in addition, of course, to the obvious liability you are facing by providing such a broad release to the Key Largo Wastewater Treatment District (KLWTD). It is unnecessary for the KLTMD to obtain this release as they are protected by Florida statutes and limited as to their exposure. Any arguments raised by Mr. Giglio to the effect that it is unknown what exposure would result without the hold harmless clause is unfounded as it is the exact type of situation that is limited by statute.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Christine De Zayas Jurado, Esq.