



MINUTES

The Key Largo Wastewater Treatment District Board of Commissioners met for their regular scheduled meeting at 4:00 PM on September 15, 2015. Present were Chairman David Asdourian, Commissioner Andrew Tobin, Commissioner Robert Majeska, and Commissioner Norman Higgins. Commissioner Stephen Gibbs was absent. Also present were General Manager Paul Christian, Chief Information Officer Rob Bulkiewicz, General Counsel Ray Giglio, Finance Manager Connie Fazio, Operations Manager Chuck Adams, acting District Clerk Katherine Jackson, and other appropriate District Staff.

Ms. Connie Fazio led the Pledge of Allegiance.

AGENDA ADDITIONS, CORRECTIONS OR DELETIONS

- Chairman Asdourian added an item to Commissioner's Items to discuss E-mails.
- Mr. Paul Christian added an item to General Manager's Report to brief the Board about a conference call regarding the Florida Keys Environmental Stewardship Bill.
- Mr. Ray Giglio added to the Legal Report: 1) an oral update on the Douglas N. Higgins, Inc. vs. Key Largo Wastewater Treatment District and Wharton-Smith, Inc. and 2) decision to defer code enforcement parcels.
- Commissioner Majeska added an item to the Operation's Report to discuss the Operations Manager's first impressions.

APPROVAL OF AGENDA

Motion: Commissioner Higgins made a motion to approve the agenda as amended, and Commissioner Tobin seconded the motion. The motion passed without objection.

PUBLIC COMMENT

Name and Address

Subject

Dawn DeBrule
56 Bay Ave

General Comments on KLWTD

Sue Heim
Key Largo

General comments on KLWTD

Sue Heim
Key Largo

July/August Monthly Finance Report

Ms. Dawn DeBrule thanked the Board of Commissioners for deferring Upper Keys Marine Construction from Code Enforcement for one week.

Ms. Sue Heim expressed her opinion regarding backup documents on the District's website.

Commissioner Tobin added an item to the agenda under Administration/Customer Service to discuss the backup documents on the District's website.

Motion: Commissioner Tobin made a motion to approve the agenda as amended, and Commissioner Majeska seconded the motion. The motion passed without objection.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

Minutes of September 8, 2015

Motion: Commissioner Higgins made a motion to approve the Minutes of September 8, 2015 as amended, and Commissioner Majeska seconded the motion.

Vote on Motion

Member	Yes	No	Other
Commissioner Tobin	X		
Commissioner Gibbs			Absent
Commissioner Higgins	X		
Commissioner Majeska	X		
Chairman Asdourian	X		

Motion passed 4 to 0

OPERATIONS REPORT

First Impressions

Operations Manager Chuck Adams commented on his first days as operations manager and answered questions from the Board.

ADMIN/CUSTOMER SERVICE REPORT

Administration Building Progression Timeline

Mr. Rob Bulkiewicz reported that phase II will be completed soon. As of meeting time, the concrete footer for the column has been poured and the steel has been inspected.

Mr. Bulkiewicz stated that the Headquarters Building Remodel RFP opening was scheduled for Thursday, September 24, 2015, and answered questions from the Board.

2015 Non-Ad Valorem Assessment Update

Ms. Diane Bockelman, Billing and Assessment Coordinator, reported that Chairman Asdourian had signed all necessary paperwork to submit the final 2015 tax roll to Government Services Group and answered questions from the Board.

Website PDF Documents

Commissioner Tobin requested that staff address concerns stated by Sue Heim that certain PDF documents on the District's website did not allow her to select text and copy and paste.

Mr. Bulkiewicz stated that documents are uploaded as they are prepared. In some cases, allowing text selection in text format is not supported.

COMMISSIONER'S ITEMS

E-Mails

Chairman Asdourian stated that he did not appreciate the e-mails that Commissioner Tobin sent after the September 8, 2015, Board Meeting, adding that the e-mails had long attachments with no explanation.

Commissioner Tobin apologized for not providing further explanation in the emails and that he was only trying provide information to the Board members about what he believed was a mistake.

GENERAL MANAGER'S REPORT

Conference Call Update

Mr. Paul Christian gave an oral update on a conference call that was held prior to the September 15, 2015 Board Meeting. Mr. Christian stated that this conference call was a legislative strategy meeting in reference to the Florida Keys Environmental Stewardship Bill (FKESB). Mr. Christian stated that the meeting was very positive and that all parties showed a genuine interest in working together to pass the bill. He

reminded them that the FKESB, if passed, would bring five hundred million dollars to the various entities within the county for a variety of environmental projects, including those previously funded by the Mayfield Grant. He also stated that this bill could renew the momentum that was apparently lost on Mayfield last year.

Mr. Christian then answered questions from the Board.

LEGAL REPORT

Douglas N. Higgins, Inc. v. KLWTD Sixteenth Circuit Court Case No. 14-CA-0110-P

Mr. Ray Giglio gave an oral update on the status of the Higgins lawsuit. He advised the Board that he and Higgins' attorney, Fred Springer, had agreed upon a Stipulated Order, which provides that the case will be dismissed with prejudice, with each party bearing its own costs and expenses, including attorneys' fees.

Code Enforcement

Mr. Ray Giglio informed the Board that, in his opinion, the Board has an obligation to send parcels that have not hooked up to Code Compliance, when all attempts to contact and notify the owners have been completed. Commissioner Higgins and Commissioner Tobin voiced their opposition to Mr. Giglio's opinion. Commissioner Majeska stated that he was only aware that staff was making the best case possible to send to code compliance. Chairman Asdourian made a suggestion to take out an ad in the local newspaper to better get the residents' attention.

Mr. Paul Christian stated that the District's procedure is to send out three letters and that the last step before sending the parcel to Code Compliance is to make the parcel information public in the agenda. The Board suggested that Staff continue with the current code compliance procedure.

Staff answered questions from the Board.

FINANCE REPORT

July/August Monthly Finance Report

Public Comment: Ms. Sue Heim expressed her opinion that the District should pay down debt with leftover money from the budget.

Ms. Connie Fazio presented the combined July and August Monthly Finance Report to the Board and answered questions.

5 MIN BREAK: 5:45 PM

Results of Project Specific Audit for SRF Loan #46401P

Ms. Connie Fazio presented the findings of the Project Specific Audit for SRF Loan #46401P that was performed by Grau & Associates to the Board. Grau & Associates found the District to be in compliance with the requirements of the loan. Ms. Fazio reminded the Board that this type of audit is standard when the loan is closed and answered questions from the Board.

EXTENSION: 6:00PM

Motion: Commissioner Tobin made a motion to extend the meeting 20 minutes. The motion passed without objection.

COMMISSIONER'S ITEMS/ROUNDTABLE

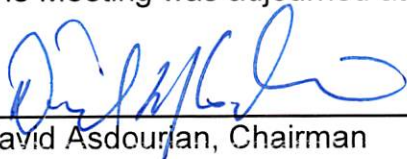
Roundtable Discussion

Commissioner Tobin read passages from an e-mail he composed regarding a parcel's one week deferral from code compliance. Commissioner Tobin also stated his opinion that the legal issue is the vague standards, and discretion is not a negative thing, even when using it spontaneously. Commissioner Tobin requested that a copy of his E-mail be attached to these minutes and are so attached as Attachment "A."


Commissioner Majeska stated that he would like the Board and Staff to keep a watchful eye on the status of the Florida Keys Environmental Stewardship Bill.

ADJOURNMENT

The Meeting was adjourned at 6:07 PM.



David Asdourian, Chairman



Katherine Jackson, Clerk

tobinlaw

From: tobinlaw [tobinlaw@terranova.net]
Sent: Tuesday, September 15, 2015 2:07 PM
To: 'Ray Giglio'
Cc: 'Commissioners'; 'Paul Christian'; 'Katherine Jackson'; 'Rob Bulkiewicz'; 'Peter@keyscpa.com'; 'Ed Castle'; 'connie.fazio@klwtd.com'; 'tobinlaw'
Subject: ONE WEEK DEFERRAL

Ray;

There is one more issue that needs to be resolved.

You characterized the Board's action as "ad hoc" and "on the fly" and went on to point out the Board "directed staff not to observe the usual and normal enforcement procedure." And while your second memo found the Board's vote was legally insignificant, someone could reasonably interpret your first memo as a finding the Board did something wrong by its "ad hoc" decision making.

Therefore, I ask you to advise the Board that even if the District had adopted a formal Rule (not to defer anyone for any reason) the Board's "ad hoc" decision to ignore/change the formal Rule was lawful because the law encourages agencies to structure their discretion progressively.

In *Dade County v. P.J. Birds*, 654 So. 2d 170 (3rd DCA 1995) the District Court of Appeals rejected a challenge to an "ad hoc" decision with the following explanation:

"Administrative agencies are not required to institute rulemaking procedures each time a new policy is developed, although that form of proceeding is preferable where established industry-wide policy is being altered." *Florida CitiesWater Co. v. Florida Public Serv. Comm'n*, 384 So. 2d 1280, 1281 (Fla. 1980) (involving state-wide rule adopted under the Administrative Procedure Act). The Florida Supreme Court has thus explicitly recognized that an administrative agency may proceed with case-by-case adjudication, and that incipient policy may be allowed to develop before the agency adopts rules.

In *McDonald v. Department of Banking and Finance*, 346 So.2d 569 (Fla. 1st DCA 1977) wrote more about "incipient policy" (another name for "ad hoc")

In adjudicating individual cases, agencies may find themselves developing policy which will be generally applicable to future cases. Such policy statements are a hybrid of an [administrative] rule and an order and have been characterized as "incipient policy." *McDonald v. Department of Banking and Finance*, 346 So.2d 569 (Fla. 1st DCA 1977). The purpose of recognizing incipient policy is to encourage agencies "to structure their discretion progressively by vague standards, then definite standards, then broad principles, [and] then rules. . . ." *Id.* at 580. Thus an agency may implement changes in its policy by adopting rules in rule making proceedings or by developing incipient policy by adjudicating individual cases. Both procedures fulfill administrative due process requirements of notice, hearing, and judicial review. The procedure to be used is often left to the agency's discretion. *City of Plant City v. Mayo*, 337 So.2d 966 (Fla. 1976). However, there are times when this discretion may be abused and an appellate court may require a particular policy statement to be codified as a rule. *Fla. Cities Water Co. v. Fla. Public Serv. Com*, 384 So. 2d 1280, 1282 (Fla. 1980).

Clearly the District does not have a FORMAL RULE, LAW, CUSTOM, OR POLICY that specifically prevented the Board (or the Staff) from deferring one person from a referral to code enforcement for one week. The truth is we just never found it necessary to vote before, or maybe we did vote at one time but no one remembers. .

In any event, I think you should advise the Board further on why "ad hoc" should not be viewed in a negative light.

Thank you,

Andy

9/15/2015

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From: tobinlaw [mailto:tobinlaw@terranova.net]
Sent: Tuesday, September 15, 2015 11:22 AM
To: 'Ray Giglio'
Cc: 'Commissioners'; 'Paul Christian'; 'Katherine Jackson'; 'Rob Bulkiewicz'; 'Peter@keyscpa.com'; 'Ed Castle'; 'connie.fazio@klwtd.com'
Subject: ONE WEEK DEFERRAL

Ray;

I agree with that part of your September 13, 2015, Memo that states:

"DELAYING A REFERRAL FOR ONE WEEK IS AN ACTION BORDERING ON INSIGNIFICANT."

Thank you for re-thinking how to portray the Board's decision to defer one individual for one week, and sending a memo that puts our action in the proper context.

Also, can you please include a short discussion of this matter at the meeting today as part of your legal report.

Thank you,

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9/15/2015