

WASTEWATER UPDATE - SEPTEMBER 3, 2014

In June, 2000, the State of Florida established that the Florida Keys Aqueduct Authority (FKAA) would have exclusive jurisdiction over the administration, maintenance, development, and provision of wastewater system services in Monroe County. A Monroe County Sanitary Master Wastewater Plan was created, as designated in FS 403.086(10), Chapter 2010-205, Section 38.

That Master Plan identified an area (and Venture Out is in that area) as being within a central wastewater system to be operated by the FKAA and obligated Monroe County to assist the FKAA, through funding, in constructing the treatment plant and installing collection systems.....i.e., in essence, a mandate that everybody located from Big Pine Key to Sugarloaf Key would have to tie in to the Cudjoe Regional Sewer System.

In August, 2010 Venture Out filed a formal application to the Florida Public Service Commission, essentially requesting that they deem our existing wastewater treatment system as a separate wastewater utility, independent of the proposed Cudjoe Regional Sewer System. Both the Board of County Commissioners and the FKAA sent letters to the Florida Public Service Commission objecting to Venture Out's application.

The FKAA's main objection centered around the fact that they had already commissioned the design of the Cudjoe Regional System, and Venture Out was included in that design.

Commissioner Sylvia Murphy (Mayor Murphy at that time) sent a letter objecting to Venture Out's application stating that the operation of our wastewater system was not consistent with the law governing wastewater treatment in the Florida Keys.

Bottom line, the Florida Public Service Commission deemed us "exempt" from coming under their umbrella and, as a result, did not approve our Application.

Two more years went by without any funding being included in the State budgeting process for this Regional Sewer System until the State budgeted \$50,000,000, \$30,000,000 of which was designated for Monroe County to put toward construction of the Cudjoe Sewer Plant, estimated to cost approximately \$153,000,000.

Monroe County scrambled to come up with a plan to finance the balance of the monies needed to complete the project and announced that each homeowner/EDU (equivalent dwelling unit) would be required to pay a Special Assessment of \$4,500, payable either in a lump sum by August 31, 2012 or the homeowners could pay this Special Assessment as a Non-Ad Valorem Tax (turned out to be \$303.00 a year) for twenty years. At the same time, they also announced they would be asking the voters -- on the November, 2012 Referendum -- to extend the existing 1% sales tax (all of which funds they promised would be dedicated to funding the construction of the Cudjoe Regional Plant. That Referendum passed on November 7, 2012.

Venture Out, with its own fully-permitted (to December, 2015 but built to meet 2020 Standards) Wastewater Treatment Plant (estimated at \$1.5 Million) and its own \$2.5 Million Dollar Wastewater Collection System (sewer pipe, lift stations, pump stations, etc.) immediately began inquiries of the FCAA and Monroe County's Board of County Commissioners as to whether Venture Out would a) be required to tie in to the Cudjoe Regional System, given the fact that we were not and never have been polluting the environment and b) be required to pay the \$4,500 Special Assessment (each one of our 659 Owners).

After numerous calls to the FCAA and the BOCC, Kevin Wilson, Monroe County's Engineer, contacted Kevin Grube stating that every Owner in Venture Out would have to pay that \$4,500 Special Assessment ---i.e., each Venture Out homeowner was being treated by Monroe County as one (1) EDU.

Mr. Wilson also indicated that Venture Out would be required to tie in to the main pipeline, scheduled to be constructed along Spanish Main Drive, utilizing two (2) lateral pipes connecting our entire Wastewater Collection System to that Cudjoe Sewer Line.

In other words, they were not planning on installing sewer lines or a wastewater piping system up and down every street in Venture Out (they were not bringing their pipe within 250' of each home in Venture Out as stipulated in 48.106.011) and, furthermore, expected Venture Out would continue to be responsible for maintaining our existing wastewater collection system, lift stations, pump stations, etc. and, in addition, Venture Out would be responsible for dismantling its Sewer Plant.

Once the new plant was built and Venture Out was required to tie in, Mr. Wilson indicated the FKAA would send two (2) water/sewer bills to Venture Out which Venture Out would pay and then divide up amongst its 659 Owners.

Unlike our Wastewater Collection System, which was permitted through December, 2015 but built to 2020 standards, our potable water system was over 40 years old and did not have FKAA-approved water meters at each individual Owner's unit.

Kevin and I met with Kirk Zuelch, Executive Director, and Kerry Shelby, Chief Financial Officer, of the FKAA, pointing out to them that treating us as 659 EDU's on the one hand, in order to collect the \$4,500 Special Assessment from each Owner, yet planning on sending just two (2) water/sewer bills to Venture Out which we would be required to divide up amongst all of our Owners, was inconsistent with the way they were treating the KOA Campground, the Boy Scouts Campground, etc., in that they were all only being charged as commercial operations.

We also pointed out that it was unfair to expect our homeowners to pay the \$4,500 Special Assessment, PLUS have to continue to pay the maintenance of our Wastewater Collection System the FKAA had "tapped into" and, furthermore, since we did not have FKAA-approved water meters at each individual unit, there was no way the FKAA could bill/send each of our Owners a water/sewage bill.

The FKAA told us they had nothing to do with the Special Assessment -- i.e., Monroe County had ordered the Special Assessment and was in the process of working on a plan to float bonds to continue funding the project.

It was at this point in time, expecting Monroe County to include Venture Out's Special Assessment dollars as a portion of the collateral to back those bonds, that the Board decided we needed legal assistance and we subsequently hired David Horan, a well-known, well-respected Key West Attorney. Attorney Horan agreed to represent us and then, two weeks later, called to say he had a conflict and, shortly thereafter, called back to say he had worked out the conflict and had scheduled a series of meetings with the FKAA officials which we had throughout the Fall of 2012.

In January, 2013, we went into a meeting (Attorney Horan, Kevin Grube, Hans Pirner, Vice President, and myself) with Kirk Zuelch, Kerry Shelby, and Bob Feldman (FKAA Attorney), expecting Commissioners Neugent and Rice representing the BOCC. In fact, neither Commissioner was in attendance. Instead, Kevin Wilson, the County Engineer, was present. representing Monroe County

The purpose of the meeting was to finalize an Agreement whereby:

1. The FKAA would take over our Wastewater Collection System;
2. Venture Out would provide all the easements required so that FKAA personnel could maintain the lift stations piping, etc.;
3. Venture Out Owners would pay the \$4,500 Special Assessment (some of whom had already paid the lump sum the previous August or the Non-Ad Valorem tax included in their November tax bill);
4. That, since our potable water distribution system was antiquated and not up to their standards, with no FKAA-approved water meters, we should have a new water system. The FKAA stated they did not have the funds in their budget and, presumably, were looking for the funds from the County.

It was at that point in time that Kevin Wilson announced there were several Commissioners who were opposed to providing the funds for a potable water system because Venture Out was a PRIVATE community and he said "we do not provide funds to private communities".

We left that meeting expecting the FKAA and Monroe County officials to work out who was going to pay for the installation of our new potable water system.

There was one other issue -- i.e., who would be responsible for dismantling our existing wastewater treatment plant -- which we subsequently agreed we would handle.

Attorney Horan (who had been thrown in the briar patch by Kevin Wilson) anticipated the FKAA and the BOCC would work out the funding of the new potable water system and actually came before a meeting of our Ownership and announced to everybody in attendance that we expected a Letter of Commitment from the FKAA by the end of February.

The Letter of Intent was not issued and, in the meantime, Monroe County was actively working on their Bond Issuance Program.

Venture Out filed a Complaint against both the FKAA and Monroe County on March 1, 2013 in an effort to again get our problems with them sorted out before they went forward with the Bond Issuance Program.

In response to our Complaint, the FKAA filed a Motion To Dismiss, as did Monroe County. The Motion To Dismiss hearings were initially scheduled for May, were postponed and rescheduled for June, at which time Monroe County filed a Motion To Stay, asking Judge David Audlin, Jr. to set aside our Complaint and their Motions To Dismiss in favor of allowing Monroe County to move forward with a Bond Validation Hearing.

Judge Audlin granted the Motion To Stay but also allowed Attorney Horan to “intervene” at the Bond Validation Hearing on Venture Out’s behalf.

The Bond Validation Hearing took place in late September and, after both sides had the opportunity to file responses, Judge Audlin eventually ruled, in December, that Monroe County could go forward with the issuance of the bonds.

We were told by Attorney Horan that we could Appeal that ruling and tie up Monroe County for an additional period of time but, instead, advised Attorney Horan that we did not want to Appeal that Ruling. The Motion To Stay, as I understand it, is still in place.

Shortly after we agreed not to Appeal Judge Audlin's Bond Validation decision, Attorney Horan indicated that he had been approached by Bob Feldman, the FKAA Attorney, stating they had a proposal to put forward which we could expect before the end of the year.

The proposal turned out to be a letter dated December 18th wherein they confirmed they would be willing to take over our Wastewater Collection System and would loan us \$1,600,000 toward the installation of the potable water system, with the FKAA-approved water meters. Venture Out was to put \$200,000 down and the balance would be paid by adding another Non-Ad Valorem Tax to each of its Owners' tax bills, payable over a twenty (20) year period.

Attorney Horan strongly endorsed we accept this proposal, going as far as to say this was the best he could do for us.

Each Board Member received a copy of the above-referenced letter and the majority of the Board encouraged us to keep negotiating.

We asked Attorney Horan to set up a meeting with Kirk Zuelch and Kerry Shelby without attorneys present. Kevin, Tom Urban and I met with Kirk and Kerry and pointed out to them that 48.106.011 (their own rules/guidelines) state "if the existing wastewater system is conveyed to the Authority, the Authority shall operate and maintain the system or replace it at no cost to the Owner".

In 48.106..011 it also says "if the existing WATER DISTRIBUTION SYSTEM is conveyed to the Authority, the Authority shall operate and maintain the system or replace it at no cost to the Owner".

The meeting with the FKAA was extremely informative. We questioned them about the installation of a wastewater collection system on Shark Key (A PRIVATE COMMUNITY) and they confirmed that they did install a system at no expense to the Owners. When we questioned them about the funding of this project, they referred us to the County.

We questioned Commissioner Neugent about the funding of the Shark Key project when we met with him and he did not have the information -- wasn't sure how it got funded.

With our Corporate Attorney Randall Roger's assistance, we then filed a request, under The Freedom of Information Act, for all FKAA documents related to installation of the Shark Key Wastewater Collection System, and other systems and filed a similar request for all Monroe County documents.

We did receive the documentation from the FKAA and, after Kevin and I have gone through reams and reams of paperwork, we now know that the County spent \$1,905,068.00 on Shark Key's (a PRIVATE COMMUNITY) Wastewater Collection System and a Water Reclamation System (for irrigation purposes). Shark Key is a private community of 36 existing homes and a possible 30 future homes -- i.e., 36 EDU's.

Also, with reference to the information we have received from the FKAA under the Freedom of Information Act, we now know they also have Interlocal Agreements with Monroe County funding other projects IN PRIVATE COMMUNITIES, including Ocean Reef, Conch Key, Duck Key, etc.

We have had three meetings with Commissioner Neugent including one with Monroe County's Attorney Bob Shillinger. We have gone over the whole question of whether 48.106.011 is applicable to Venture Out's situation. Obviously, the FKAA has, with other private communities, utilized 48.106.11 to either take over those private communities' wastewater systems or install completely new systems AT NO EXPENSE TO THEIR OWNERS.

We also pointed out that the FCAA stands to collect \$316,000 a year, JUST IN BASE FACILITY CHARGES, from Venture Out Owners (\$39.99 per month times 659 Owners times 12 months).

Attorney Shillinger asked that we give him some time to review 48.106.011, meet with the other Commissioners and would be back in touch with us by the end of April.

In the meantime, Monroe County still had not released the information requested by our Corporate Attorney, Randall Roger.

There is no question that Kevin Wilson was somehow involved in the County's reluctance to release the information requested. Mr. Wilson called Kevin asking for a detailed breakdown of exactly what information we were looking for, which Manager Grube provided. and we finally did receive the data from Monroe County.

After waiting several months, with neither Commissioner Neugent or Monroe County's Attorney, Bob Shillinger getting back to us as promised, both Kevin and I felt, we had exhausted every avenue of trying to reach an amicable Agreement with the FCAA and Monroe County's Board of Commissioners.

We needed legal assistance and, given the fact that Attorney Horan felt the FCAA's December 18th proposal to loan us \$1,600,000 toward the installation of a potable water system (adding another Non-Ad Valorem Tax to our Owners' tax bills, payable over twenty (20) years) was the best he could do for us, we started the search for another attorney.

On June 17th, the Board voted to terminate our Agreement with Horan, Wallace & Higgins P.S. and we subsequently retained the services of Barton W. Smith, Esq. Attorney Smith, you may know, successfully represented No Name Key's homeowners versus Monroe County in their quest to bring utility poles and electricity to the surrounding area.

What we asked Attorney Smith to do was to provide an independent legal opinion, analyzing our wastewater collection system and water distribution system and the systems' potential acquisition by, or conveyance to, the FCAA, with the understanding that our objective is to obtain the lowest cost solution to providing utilities to our Owners.

Attorney Smith, after several telephone conferences with Kevin and myself, has reviewed all our files. He met with Attorney Horan in mid-July and reviewed all his files. He contacted both Attorney Shillinger and the FCAA's in-house General Counsel, Bob Feldman, and reviewed all their files. He also has reviewed the Florida Statutes, Monroe County's Ordinances and their Comprehensive Plan, plus Amendments to that plan.

We now know, after reviewing all the information we received via The Freedom of Information Act, that Monroe County has, in fact, paid \$1,905,068 for the installation of a wastewater collection system and a water reclamation system on Shark Key, A PRIVATE COMMUNITY, and has also funded, through Interlocal Agreements with the FCAA, other PRIVATE COMMUNITIES.

Attorney Smith has recommended that we continue to try and reach an amicable agreement with Monroe County..i.e., we are not looking for a long legal battle. All we want is the same service and treatment many other private communities have received.

Stan Bowers - President

September 3, 2014

