

**MINUTES**

**KEY WEST BIGHT MANAGEMENT DISTRICT BOARD MEETING**

**OLD CITY HALL, 510 GREENE STREET**

**JUNE 13, 2012**

A regular meeting of the Key West Bight Management District Board of the City of Key West, Florida, was held in Commission Chambers, Old City Hall, 510 Greene Street, on Wednesday, June 13, 2012.

The Chairman called the meeting to order at 9:00 a.m.

Answering roll call were Board Members Jermy Ashby, Harry Bowman, Jimmy Lane, Dan Probert and Chairman Michael Knowles presiding. Kathryn Ovide arrived at 9:03 a.m.

Also present were Chief Assistant City Attorney Larry Erskine, Key West Bight Marine Manager Mark Tait, Port Operations Manager John Castro, Senior Property Manager Marilyn Wilbarger, Risk Manager Sandra Barroso and Clerk of the Board Sue Harrison.

Others in attendance were Jack Anderson from the Key West Bight Preservation Association.

The pledge of allegiance to the flag of the United States of America was given by all present.

Chairman Knowles asked for a moment of silence from those present acknowledging the passing of Board Member Michael Wilson.

**CHANGES TO THE AGENDA:**

Mr. Probert asked that a Discussion Item regarding the Key West Ice Cream Factory be added to the agenda. The Chairman placed the Discussion Item to be heard before the reports.

It was moved by Mr. Lane and seconded by Mr. Probert to approve the agenda as changed.

The Chairman asked for objections and seeing none, the agenda was accepted as changed.

**APPROVAL OF MINUTES:**

- 1) May 9, 2012 (Regular)

It was moved by Mr. Bowman and seconded by Mr. Probert to approve the minutes of May 9, 2012.

The Chairman asked for objections and seeing none the minutes were approved as read.

The Chairman acknowledged Board Member Kathryn Ovide had arrived.

**ACTION ITEMS:**

- 2) Insurance Provision – Key West Bight Commercial Dockage Agreement

Ms. Wilbarger stated Ms. Barroso, the City's Risk Manager, was present to answer any questions they may have. She stated the Commercial Dockage Agreement (in the next item) includes the new insurance language as reflected in the discussion from the previous meeting and are specifically listed under heading #15 **Insurance**.

It was moved by Mr. Lane and seconded by Ms. Ovide to approve the item as presented.

The Chairman asked the Clerk to call the roll.

Yeas: Board Members Ashby, Bowman, Lane, Ovide, Probert and Chairman Knowles

Nays: None

The Chairman thanked Ms. Barroso for her work and she left the meeting.

- 3) Approval of 1-Year Key West Bight Commercial Dockage Agreement

Mr. Tait presented the item stating at this time the agreement was ready for approval now that the insurance requirements had been addressed.

The following person spoke on the item:

Jack Anderson, Key West Bight Preservation Association

(A copy of the Association's concerns as presented by Mr. Anderson are attached hereto and made a part of these minutes.)

The Chairman asked Mr. Tait and Ms. Wilbarger about the items of concern. Both Mr. Tait and Ms. Wilbarger stated these items were carried over from the current lease, were standard in all the leases city-wide and the lease had been reviewed by the Legal Department. The hope was that the tenants would find the new signage policy as a benefit allowing tenants the opportunity to be creative. Registering of mechanics was to ensure that mechanics that work on vessels had the required licensing and insurance.

Mr. Bowman asked how the HARC Rules and Regulations fit in with the signs. Ms. Wilbarger stated HARC (HARC Planner Enid Torregrosa) worked with Staff to develop the sign policy and regulations for the marina.

Mr. Lane asked Mr. Erskine about the lease. Mr. Erskine said after working on it with Staff he felt it was a good document.

Mr. Lane asked Ms. Wilbarger about the sign policy. Ms. Wilbarger stated the tenants have six months to come into compliance. Mr. Tait added this would bring the signs into a more uniform size.

Ms. Ovide added this will incorporate the previously approved sign policy into the lease.

It was moved by Mr. Lane and seconded by Ms. Ovide to approve the item as presented.

The Chairman asked the Clerk to call the roll.

Yeas: Board Members Ashby, Lane, Ovide, Probert and Chairman Knowles

Nays: Board Member Bowman

4) AER Photography Lease Renewal

Ms. Wilbarger presented the item. The lease for Alicia Renner, dba AER Photography, was proposed for a one-year renewal. Ms. Wilbarger stated her concerns in that the tenant would often close her store for weeks at a time. She said it was vital that the store remain open and active. The tenant agreed to keep the store open whether or not she is there and with that condition she supported a one-year lease renewal to see how it works. The tenant was in agreement. If that year goes well then she would present a longer lease renewal for the tenant next year.

It was moved by Mr. Bowman and seconded by Mr. Probert to approve the item as presented.

The Chairman asked the Clerk to call the roll.

Yeas: Board Members Ashby, Bowman, Lane, Ovide, Probert and Chairman Knowles

Nays: None

**DISCUSSION ITEM:**

5) Key West Ice Cream Factory

Mr. Probert stated he understood that all the Board Members had received an email from the Key West Ice Cream Factory regarding reimbursement for closing the store for a week. He suggested that this be considered as an Action Item at the next meeting to consider helping him pay for the loss of a week's revenue.

Ms. Wilbarger stated unfortunately the lease does not provide for rent abatement while the landlord makes repairs. She stated she had not received a request from the tenant for abatement nor was she copied on the email and therefor was not prepared to bring information to the Board. The Board can make a recommendation to the CRA to abate the rent for a period of time.

Mr. Erskine stated he had reviewed the lease some time ago and it does say that in the event the landlord is required to make necessary repairs there is no responsibility on the part of the landlord to abate the rent. The Board was able to make the recommendation to the CRA.

Mr. Scott Cates spoke to the Board regarding closing his Ice Cream Factory business for six days. He complained that after the work was done the store was covered in dust. He stated that Mr. Castro had been very professional about the closing. He stated nothing was found to be wrong after the work was finished. He added that he had to either give away or throw away the food products in the store. Mr. Cates stated that last year during those six days the business took in \$7,100.00.

Mr. Lane asked when the closing occurred. The work occurred in June, about a week ago, and Mr. Castro stated the notice had been sent three weeks prior and another notice had been sent before the entire project started advising everyone about the project.

Mr. Bowman asked what that meant in rent for 5 days. Mr. Cates stated the rent for one month is \$4,800.00. Mr. Lane calculated \$960.00 for six days in rent and he would support a credit in that amount. Mr. Cates stated he would not accept that amount. Mr. Lane withdrew his support for the credit as an action item next month as Mr. Cates was not in agreement to the amount.

Chairman Knowles asked Mr. Cates what he was expecting. Mr. Cates stated he lost \$10,000.00 but was expecting the same as he had made the previous year, \$7,100.00.

Chairman Knowles asked had there ever been an issue like this before with rent abatements. Mr. Wilbarger was not aware of any instances. She would bring back information for the Board calculating what the rent would have been and include sales figures. She would include lost revenue figures based on last year's sales as well.

Chairman Knowles did not want to set precedence and asked if there were any other projects coming up that could cause issues like this. Ms. Wilbarger stated there were more projects coming including the Schooner Wharf Rebuild, the Thompson Fish House (museum), Turtle Kraals and the Piano Shop. Mr. Knowles asked for the time and what that would cost as well. Ms. Wilbarger stated the repairs to the Thompson Fish House could take a year and a half with extensive repairs. They have not been able to open the museum exhibit and they are working to provide temporary entrances to allow them to use the building during the reconstruction.

Ms. Ovide asked how this could be avoided in the future. Ms. Wilbarger stated Mr. Castro did a great job keeping the tenant informed and the tenant let them know when he was ready for the project to start. She also said they paid extra to get the job done in five days and she believed they were diligent in their efforts to mitigate the tenant's losses.

Chairman Knowles restated he did not want to set precedence with a dollar value that the City is going to be liable for and that might invite law suits. Mr. Knowles confirmed this should be placed on the next agenda as an Action Item.

Mr. Lane clarified what the Action Item should be, to direct Staff to determine a procedure, not only for this, but for projects going forward as he too was concerned about setting precedence, and to make the Action Item retroactively applied to Mr. Cate's scenario.

#### **REPORTS:**

##### 5) Manager's Report

Ms. Wilbarger brought to the Board's attention the Thompson Fish House and those repairs, and the Yankee Freedom had been moved down the dock. They have come to an agreement to relocate to the Ferry Terminal. She believed the facility is more adequate for their needs. They can

stay for the period of the reconstruction of the Fish House and after that time they would have the option of going back or staying at the Ferry Terminal. She stated while staying at the Ferry Terminal they would be able to offer a long term lease agreement that would be to their benefit with their State Park Requirements. The terminal is air conditioned where they would be able to show their safety films. They have agreed to the rates at the Ferry Terminal location however they did need to discuss a lower rent for the Fish House, if need be, while it is under construction.

Mr. Probert asked about the Interpretation Center. They are working on getting it open with temporary entrances for access. Ms. Wilbarger stated Mr. Castro had received engineer drawings. They are working with HARC, Planning and Building for approval.

Mr. Lane asked about the arch sign. Ms. Wilbarger stated the Dry Tortuga sign would say "The Dry Tortugas Museum". It would be similar to the Western Union arch.

Mr. Probert asked about the repairs to the Fish House. Ms. Wilbarger explained the inside walls that were rebuilt are fine. The outside concrete is falling off the building. The building is shored up so nothing else can fall off. The roof is supported by the new interior structure.

Mr. Probert asked about the Complete Design Charter Boat Attraction at Key West Bight Marina. Ms. Wilbarger explained there had been the old check-in booth at Margaret Street Plaza and they had worked with Yankee Freedom to try to relocate it to make it a ticket booth for them but it is not re-locatable. As this is an empty structure they are trying to turn it into an attraction like a fish cleaning station, a place where Charter Boat customers could hang, or weigh, or clean their fish. This would come before the Board for approval.

Mr. Probert asked about the new historic vessels coming to the Bight. Mr. Tait recently received word that the historic ship that had been previously presented to the Board has backed out

of the deal. He is contacting a few people that are on the waiting list and hopefully will find another historic schooner to put into the slot next to the museum.

Mr. Probert asked about the electric pump out. Mr. Tait stated they have purchased the pump and installed piping and then they were stopped as the sewer pump was over the over water. He is working with David Fernandez and Doug Bradshaw on a land based location to finish the project.

6) Accounts Receivable Report

Ms. Wilbarger stated they have send Buddy Owen from B.O.'s Fishwagon a default letter last week. If no payment is received by the 21<sup>st</sup> of this month the matter will be sent to the Legal Department. His garbage account has been cancelled, they do not have his DR 15 sales report, his base rent is in arrears. He was notified by both first class and certified mail and the certified letter was not accepted but they know that he knows.

Mr. Bowman asked about the contract approval for ice vending machines. Ms. Wilbarger stated that would be at the City Marina at Garrison Bight and if it worked well there they would consider doing the same at Key West Bight.

7) Key West Bight Preservation Association Report

Mr. Anderson, Key West Bight Preservation Association, reported to the Board they have funding for Christmas at the Bight for 2012 and are working on funding for 2013. He asked if staff would be doing the lights again as the TDC would like to see a better effort on the lighting.

Mr. Anderson asked if the rent escalations and parking rates have been before the City Commission. Ms. Wilbarger stated the rent escalation was approved by the Commission and the parking will be on the July agenda. The lighting for Christmas was in the budget.

8) Old Business

Ms. Ovide asked about the discount program for fuel. Mr. Tait reported the program was doing well and he would have a more detailed report next month.

**PUBLIC COMMENTS:**

There were no comments from the public.

**BOARD COMMENTS**

Mr. Probert commented on the minutes of May 9, 2012 under "Reports – 7) Manager's Report" it was noted that "Mr. Castro's Response was inaudible." He asked for information that could be added. Mr. Ashby commented he had asked about the paving in the parking lot between Lost Reef and the Railroad Museum and he was concerned about that. Mr. Castro stated he confirmed they were adding asphalt and Cale machines.

Ms. Ovide asked if they had addressed the loss of Mr. Wilson at the beginning of the meeting. She stated it was a big loss to the tenants and their board.

**ADJOURNMENT:**

There being no further business the Chairman adjourned the meeting at 10:02 a.m.

  
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Susan P. Harrison, CMC, Clerk of the Board  
Senior Deputy City Clerk

Key West Bight Preservation Assn. Inc.

JACK Anderson  
HANDOUT  
ITEM #3

6-11-12

Re: Proposed Dockage lease for the Key West Bight Marina.  
For the record:

While the members appreciate that the Board and City Staff have made a great effort in rectifying insurance clause, major obstacles remain to a fair, mutually beneficial agreement. Members hope that at this point, the Bight Board realizes that there are additional problems and ramifications that lurk in the wording of this document, both for the City and Tenants. The members request that the Board addresses the following issues that can be easily fixed for the mutual benefit of the City and it's tenant partners with a little more time and input from both parties.

Remaining major obstructions to members willfully signing the proposed KW Bight dockage lease:

(2) Forced relocation of a commercial boat at the sole discretion of the Lessor at any time, for Race Week or for no reason at all, with no room for compensation or discussion.

(8) Punitive 15% late payment penalty.

(11, 19, 26, 31) Default/Cure/Termination - Immediate termination with one or no warning, appeal, arbitration, chance for cure - promotes termination over compliance.

(13, 35) Release, Indemnity - produces a legal quagmire for both parties with unreasonable and unclear language.

(15) Insurance - P&I requirement now reasonable.

(25) (16, 17, 20 rules) Signs, tables, chairs, umbrellas, dock boxes, fish tables, hanging trophy fish, historic signage etc. - Removal, without H.A.R.C approval, of historic, previously accepted and/or long standing objects that are part of the random, historic attraction of the KW Bight, or an item vital to daily operations. New sign policy that reduces historic value and attraction of the KW Bight, stifles personal creativity and interaction, causes major confusion for way-finding, and creates gentrification of an historic Key West marina, especially when compared to the neighboring marinas.

(19 rules) Registering of mechanics - Need to allow for Weekend / Holiday emergencies with pre-approved list.