

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: July 18, 2007 - KW

Division: County Attorney

Bulk Item: Yes  No

Staff Contact Person: Suzanne A. Hutton

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**AGENDA ITEM WORDING:**

A Special Joint City/County Commission meeting to discuss pending conflicts and issues between the City of Key West and Monroe County concerning stormwater utility fee assessments imposed by the City of Key West for the Key West International Airport.

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**ITEM BACKGROUND:**

The City of Key West enacted a stormwater utility Ordinance No. 01-06 (codified as Section 74-363, Code of the City of Key West) on June 5, 2001 and imposed Stormwater User Fees on the Key West International Airport (KWIA). The KWIA commissioned two engineering studies showing the fee the City was charging the County was excessive. The County met with City representatives on several occasions in an effort to resolve the disagreement over the appropriate charge with no resolution. In an attempt to resolve the dispute, the County then commissioned a drainage calculation study. The study was completed again showing the fees being charged by the City are excessive.

On June 21, 2006, the BOCC authorized by resolution the initiation of Conflict Resolution procedures pursuant to Chapter 164, Florida Statutes. A conflict assessment meeting was subsequently held 8/23/06. At the conclusion of that meeting, the representatives of the County agreed to provide additional information concerning the disputed issues which the County subsequently provided by correspondence to the City dated 12/22/2006. The parties further agreed that the completion of the conflict assessment phase pursuant to Chapter 164, Florida Statutes, would be continued until November 30, 2006. Due to scheduling conflicts resulting in numerous mutually agreed upon extensions, a date was ultimately set and noticed by the County for July 18, 2007.

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**PREVIOUS RELEVANT BOCC ACTION:**

3/15/2006 BOCC direction to staff to renegotiate.

6/21/2006 BOCC approved *Resolution 269-2006*

8/23/2006 Conflict Assessment Meeting was held

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**CONTRACT/AGREEMENT CHANGES:**

N/A

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**STAFF RECOMMENDATIONS:**

TBD

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**TOTAL COST:** \_\_\_\_\_ **BUDGETED:** Yes  No

**COST TO COUNTY:** \_\_\_\_\_ **SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes  No  **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty  OMB/Purchasing \_\_\_\_\_ Risk Management \_\_\_\_\_

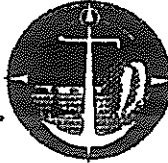
**DOCUMENTATION:** Included  Not Required \_\_\_\_\_

**DISPOSITION:** \_\_\_\_\_ **AGENDA ITEM #** \_\_\_\_\_



**BOARD OF COUNTY COMMISSIONERS**

Mayor Mario Di Gennaro, District 4  
Mayor Pro Tem Dixie M. Spehar, District 1  
George Neugent, District 2  
Charles "Sonny" McCoy, District 3  
Glenn Patton, District 5



Suzanne A. Hutton, County Attorney\*  
Robert B. Shillinger, Chief Assistant County Attorney  
Pedro J. Mercado, Assistant County Attorney  
Susan M. Grimsley, Assistant County Attorney\*\*  
Natileene W. Cassel, Assistant County Attorney  
Cynthia Hall, Assistant County Attorney

Office of the County Attorney  
PO Box 1026  
Key West, FL 33041-1026  
(305) 292-3470 - Phone  
(305) 292-3516 - Fax

\*\* Board Certified in City, County & Local Govt. Law

December 22, 2006

Julio Avel  
City Manager  
City of Key West  
525 Angela Street  
Key West, Florida 33040-7432

Re: Conflict Resolution Procedures -City of Key  
West Stormwater Utility Fee

Dear Mr. Avel:

During our Conflict Resolution discussions held on August 23<sup>rd</sup>, you requested a summary of the various issues that Monroe County believes require adjustment in the City's stormwater utility fee imposed upon Key West International Airport. Please accept this letter as a summary of those matters.

Previously, the County brought to the City's attention that the fee being charged was unrelated to the extent of impervious surface at Key West International Airport (the "Airport"). Subsequently, the City reviewed this issue and made certain adjustments to more closely calculate its fee based on the actual amount of impervious surface on the property. However, there continues to be several other issues which result in a substantial inequity and direct impact on the validity of the City's stormwater utility fee.

**1. The Fee Fails to Address Credits for the County's On Site Disposal of it Stormwater**

The City has created a stormwater utility under the authority of Chapter 403, Florida Statutes. Pursuant to the requirements of the statute, the fee charged must be based upon a property owners' "...relative contribution to its need." See Section 403.031 (17), Florida Statutes. Notwithstanding this mandatory requirement of law, the City's ordinance imposes conditions that results in a property owner paying far more than his relative contribution. The purpose of these provisions appear to be calculated to create conditions which would maximize the revenue to the City unrelated to a particular

property's impact on the City's stormwater system. This is contrary to the law and results in the stormwater utility fee being imposed by the City to constitute an unlawful tax.

The County has taken significant steps to manage and control stormwater at the Airport. This includes, but is not limited to, the installations of numerous deep well injections systems and other improvements to treat and dispose of stormwater from the Airport. As a result of these efforts, the County is able to retain and dispose of all the stormwater it receives during a 25-year storm event, of 72-hour duration, with the possible exception of an extremely small area of the impervious surface (approximately 9.76 acres). Notwithstanding the great expense that the County has incurred in installing these systems, and the limited, if any, impact the Airport has on the City's stormwater system, the ordinance fails to provide a credit to recognize the impacts of any of the infrastructure constructed by the County to treat and dispose of stormwater. The result of this deficiency is that the Airport is charged a stormwater fee based upon every inch of impervious surface and as if they have done nothing to eliminate the flow of stormwater into the City's system. It is the position of the County that the City's fee does not charge the Airport based upon its relative contribution to the need and is, therefore, an invalid tax.

The reason for this inequity is two-fold. First, the City ordinance makes no effort to consider the existences of such disposal facilities on a given property into account and calculates only the extent of impervious surface that exists on a given property. The law requires that the calculation be based upon the extent that a given property contributes to the City stormwater system.

Second, rather than granting a credit as is required, the City ordinance contains an arbitrary requirement which acts as a bar to the County from receiving its proper credit for such improvements. The City ordinance only makes adjustments for properties which are "exempt" as defined in Sec. 74-361 of the Code of the City of Key West. The definition of exempt properties requires that for a property to be exempt, it must retain 100% of the total volume of runoff within the property (measured based on a 72 hour, 100-year storm event). This is an arbitrary standard being imposed solely to eliminate any possible credit for on site retention and disposal. It is arbitrary because there is no rational basis for the imposition of this standard. The City requirement for the level of service for stormwater is that post development runoff shall not exceed the predevelopment runoff rate for a 25-year storm event, up to and including an event with a 24-hour duration, not a 100-year event. (See Sec. 94-69 Code of the City of Key West). The standard met by the airport for on site retention and disposal is that required by both the FAA and the Water Management District. It is a standard greater than required of any other development within the City of Key West. Finally, it is arbitrary because the level of service provided by the stormwater system of the City does not nor is it intended to even approach that level of treatment and discharge for a 100-year storm event. As a result, the City prevents any consideration of on site mitigation by requiring a standard to be met which is not required by development in the City, nor provided by the City in its own system. The sole purpose is to arbitrarily prevent any consideration of on site mitigation by a property owner.

Nor, as was implied at the joint City-County meeting, is the extent of treatment of the stormwater a reasonable basis for denying the County its required credit. The County provides substantial on-site treatment of stormwater generated at the Airport, the extent of which is far greater than provided by almost all properties within the City. However, even if the County provided no on-site treatment, the extent of credit required would be the same. This is because the City's stormwater utility fee is based solely on water quantity, not water quality.

**2. The Criteria for Obtaining a Credit From the Amount of the Fee is Not Rational**

Under the criteria imposed by the City, a partial credit may be given by meeting some of the standards for a storm event. Under the criteria, if a property collects and retains 100% of the runoff on the property as measured on a 72 hour, 25-year storm event, then the property owner shall receive a reduction of 15%. If the property collects and retains 100% of the runoff on the property as measured on a 72 hour 50 year storm event, then the property owner shall receive a reduction of 25%. Though this adjustment is available, there is no rational basis for the extent of credit granted. As previously discussed, the City's stormwater system does not operate on a standard which would provide, on a system wide basis, sufficient capacity to treat and dispose of a 25 year storm event let alone a 50 or 100 year storm event. Therefore, to only grant a 15% credit for meeting a standard that exceeds the level of service that the City is providing is arbitrary. Additionally, the extent of credit to be granted from larger storm events is not related to the actual reduction of impacts on the system that will result. The numbers are merely selected to minimize the financial impact on the City from granting the full credit that the properties are entitled.

**3. The Stormwater Fee Fails to Impose the Fee on All Properties and Makes the Other Properties Pay the Fair Share of Those Other Properties**

Under the City's ordinances, certain properties are not subject to the stormwater utilities fee or receive a reduced fee. These include certain City property, property of the United States Navy and those granted a discounted from under Sec. 74-365. To the extent that properties are exempt from the payment of the stormwater utility fee, that cost is being passed on to the other fee payers. Particularly in the case of the property of the United States Navy, the extent of impervious property owned by them is extensive and it is contributing to the stormwater of the City. Rather than subsidizing this exemption from other non-fee revenues, the City is passing the cost of that contribution to the City's stormwater system on to the other fee payers. As such, this is improper.

**4. The County Stormwater System Receives a Large Amount of the City's Runoff Yet Does Not Receive Any Credit From Its Fees For The Reduction to The City's Stormwater**

The County's Stormwater System receives a substantial amount of the runoff generated in the City. Primarily, this is the stormwater received by the County's stormwater system from County roads within the municipal boundaries of the City. This results in a direct reduction of the stormwater that the City is required to treat and dispose. However, the County received

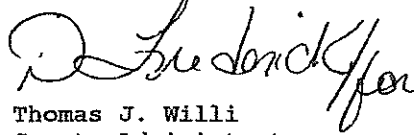
Julio Avel  
December 22, 2006  
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no consideration or offset from the amount of its fees from the treatment and disposal of this stormwater and the reduction of the City's burden.

As a result of these various issues, the County believes that the amount of the stormwater utility fee paid by the County far exceeds its impact on the City's stormwater system. We look forward to working with you in the resolution of these issues. Should you require any additional information, please contact my office.

Yours truly

A handwritten signature in cursive script, appearing to read "T. Willi".

Thomas J. Willi  
County Administrator

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, AUTHORIZING THE INITIATION OF CONFLICT RESOLUTION PROCEDURES AGAINST THE CITY OF KEY WEST AS PROVIDED BY CHAPTER 164 OF THE FLORIDA STATUTES.**

**WHEREAS**, the City of Key West (the "City") on June 5, 2001, adopted Ordinance 01-06 (codified as Section 74-363, Code of the City of Key West), which imposed Stormwater User Fees on every residential and non-residential property, other than exempt property, located within its municipal boundaries; and

**WHEREAS**, Key West International Airport, which is owned by Monroe County (the "County"), is located within the municipal boundaries of the City and is subject to the Stormwater User Fee imposed by the City; and

**WHEREAS**, pursuant to the City Code, Key West International Airport appealed the calculation of the Stormwater User Fee as imposed by the City; and

**WHEREAS**, on January 1, 2002, Key West International Airport issued Purchase/Service Order No. 02/03-6 to URS to provide an analysis of airport property to determine the extent of stormwater retained on site and treated to calculate the eligible credit from the City's Stormwater User Fee; and

**WHEREAS**, the City has been provided with copies of the studies; and

**WHEREAS**, as a result of discussions with the County, the City adjusted the amount of the Stormwater User Fee to reflect the extent of impervious surface located at the Key West International Airport; and

**WHEREAS**, there continues to be other factors relating to the calculation of the appropriate amount of Stormwater User Fee upon the Key West International Airport which have not been addressed by the City. These include, but are not limited to, the following:

A. The County has constructed at Key West International Airport an extensive retention and disposal system that is able to retain and treat all or substantially all stormwater from the Airport and, therefore, the Airport is not discharging into, or otherwise impacting upon the City's stormwater utility system.

B. The City is requiring all development to meet a standard for retention of stormwater sufficient to meet a twenty-five year storm event over a 72-hour period, however, the Stormwater User Fee imposed by the City is calculated on a substantially greater standard than required of development or provided by the City.

C. The City is proposing to utilize the proceeds of the Stormwater User Fee on improvements and activities that are unrelated to and provide no benefit to the Key West International Airport.

WHEREAS, as a result of these and other factors, the County believes that the City is charging an excessive fee and that it constitutes an unlawful tax; and

WHEREAS, Florida law requires that the amount and use of the Stormwater User Fee be related to the impacts on the system and the actual expenditure of the proceeds.

**NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

1. The following are findings of fact by the BOCC regarding the calculation of the appropriate amount of Stormwater User Fee upon the Key West International Airport which have not been adequately addressed by the City:

A. The County has constructed at Key West International Airport an extensive retention and disposal system that is able to retain and treat all or substantially all stormwater from the Airport and, therefore, the Airport is not discharging into, or otherwise impacting upon the City's stormwater utility system.

B. The City is requiring all development to meet a standard for retention of stormwater sufficient to meet a twenty-five year storm event over a 72-hour period, although the Stormwater User Fee imposed by the City is calculated on a substantially greater standard than required of development or provided by the City.

C. The City is proposing to utilize the proceeds of the Stormwater User Fee on improvements and activities that are unrelated to and provide no benefit to the Key West International Airport.

D. Florida law requires that the amount and use of the Stormwater User Fee be related to the impacts on the system and the actual expenditure of the proceeds.

2. As a result of these and other factors, the County believes that the City is charging an excessive fee and that it constitutes an unlawful tax; an

3. Monroe County shall initiate the conflict resolution procedures pursuant to Chapter 164, Florida Statutes, as required prior to initiating court proceedings to resolve the conflict between the City of Key West and Monroe County as to the appropriate Stormwater User Fee for the Key West International Airport.

4. Within five (5) days following the adoption of this resolution, the County Administrator is directed to send a letter and a certified copy of this Resolution to the Chief Administrator of the City of Key West by certified mail, return receipt requested. The letter shall contain, at a minimum, the information required by section 164.1052(1), Florida Statutes.

5. The Monroe County Attorney's Office or its designee is the authorized representative of the County at the conflict resolution hearing.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on July 19, 2006.

Mayor Charles McCoy	<u>Yes</u>
Mayor Pro Tem Dixie Spehar	<u>Yes</u>
Commissioner George Neugent	<u>Yes</u>
Commissioner Glenn Patton	<u>Yes</u>
Commissioner David Rice	<u>Yes</u>

(Seal)

Attest: Danny L. Kolhage, Clerk

By: *Janele Hancock*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: *[Signature]*  
Mayor/Chairperson

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
*Pedro J. Mercado*  
PEDRO J. MERCADO 7/17/06  
ASSISTANT COUNTY ATTORNEY

FILED FOR RECORD  
2006 JUL 24 PM 3: 25  
DANNY L. KOLHAGE  
CLK. CIR. CT.  
MONROE COUNTY, FLA.

**NOTICE OF JOINT CITY/COUNTY COMMISSION**  
**SPECIAL PUBLIC MEETING**

**NOTICE IS HEREBY GIVEN TO WHOM IT MAY CONCERN** that on **Wednesday, July 18, 2007 at 5:30 p.m.**, or as soon thereafter as may be heard, at the Harvey Government Center located at 1200 Truman Avenue, Key West, Monroe County, Florida, a special Joint City/County Commission public meeting will be held pursuant to Chapter 164, Florida Statutes, Conflict Assessment Process, regarding

**CITY OF KEY WEST**  
**STORMWATER UTILITY FEE ASSESSMENTS**  
**KEY WEST INTERNATIONAL AIRPORT**

The purpose of the Special Public Meeting will be to discuss pending conflicts and issues between the City of Key West and Monroe County concerning City of Key West stormwater utility fee assessments for the Key West International Airport in a joint effort toward resolution.

Persons interested in this issue are invited to attend. The public is further advised that some or all of the members of the Key West City Commission and/or their appointed representatives and other City staff; Monroe County Commission, and/or their appointed representatives, Monroe County Airport staff and other County staff may attend the meeting to discuss these issues.

Pursuant to Section 286.0105, Florida Statutes, notice is given that if a person decides to appeal any decision made by the Board with respect to any matter considered at such hearings or meetings, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Dated at Key West, Florida this 18<sup>th</sup> day of June, 2007.

DANNY L. KOLHAGE, Clerk of the Circuit  
Court and ex officio Clerk of the Board of  
County Commissioners of Monroe County,  
Florida

(SEAL)

**For Publication as a Display Ad on:**

**Reporter** (Fr) 6/22/07  
**Keynoter** (Sa) 6/23/07  
**KW Citizen** (Su) 6/24/07