

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA**

WALTER P. DRABINKSI,
A Citizen and Ratepayer in a Dense Subdivision
located in the Cudjoe Regional Service Area,

Case No.

Plaintiff,

v.

FLORIDA KEYS AQUEDUCT AUTHORITY,
a special district of the State of Florida, MONROE
COUNTY, FLORIDA, a political subdivision of the
State of Florida and MONROE COUNTY CLERK OF
THE CIRCUIT COURT, a judicial officer of the State of
Florida,

Defendants.

COMPLAINT

Plaintiff, WALTER P. DRABINKSI (hereinafter "DRABINSKI"), a resident in a dense subdivision of the Cudjoe Regional Service Area ("CRSA"), brings this action against Defendants, FLORIDA KEYS AQUEDUCT AUTHORITY, a Special District of the State of Florida (hereinafter "FKAA"), MONROE COUNTY, a political subdivision of the State of Florida (hereinafter "MONROE COUNTY") and the MONROE COUNTY CLERK OF THE CIRCUIT COURT, a judicial officer of the State of Florida (hereinafter "CLERK") states as follows:

PARTIES

1. Plaintiff, DRABINSKI, is a full time resident of Monroe County.
 2. Defendant, FCAA, is a Special District of the State of Florida.
 3. Defendant, MONROE COUNTY, is a political subdivision of the State of Florida.
 4. Defendant, CLERK, is a judicial officer of the State of Florida.
-

JURISDICTION AND VENUE

5. This is an action for injunctive relief under the Florida Rules of Civil Procedure and Chapter 86 Florida Statutes.
6. Venue is in Monroe County, in that the cause of action has accrued in Monroe County, and the CRSA is located in Monroe County.
7. The amount in controversy is in excess of Fifteen Thousand and 00/100 dollars (\$15,000.00), exclusive of interest and costs.
8. This Court has jurisdiction to hear this case and venue is appropriate in this Court.

GENERAL ALLEGATIONS

9. In 2000, MONROE COUNTY adopted a "Monroe County Sanitary Wastewater Plan" for the purpose of designing a central wastewater collection system and treatment facility for incorporated and unincorporated areas of Monroe County, Florida, including, but not limited

to, the CRSA. Relevant portions of the June 2000, "Monroe County Sanitary Wastewater Plan" are attached as Exhibit "A."

10. On July 15, 2003, MONROE COUNTY adopted Ordinance No. 027-2003 (the Wastewater Assessment Ordinance) which provides for imposition and collection of wastewater assessments against properties in Monroe County. A copy of Ordinance No. 027-2003 is attached as Exhibit "B."

11. On or about October 5, 2005, MONROE COUNTY and FKAA entered into a "Lease Agreement," whereas MONROE COUNTY, as "Lessor," would lease to FKAA, as "Lessee," certain lands for the "construction, equipping and operation" of a "wastewater and sewer system." A copy of the October 5, 2005 Lease is attached as Exhibit "C."
12. Pursuant to the Section 2.8(v) of the October 2005 Lease (Exhibit "C") the Lessee (FKAA) was required to "establish rates, fees and System Development Charges for the System which will be sufficient to provide funds adequate to fully cover the Operations and Maintenance Expenses of the System..." See Exhibit "C" subsection (v), pg. 10 of the October 5, 2005 Lease.
13. Beginning in 2006, MONROE COUNTY and the FKAA entered into a series of Inter-local Agreements (hereinafter "ILA") in which FKAA assumed the role of an "independent contractor" responsible for constructing and operating the Cudjoe Regional Wastewater System (hereinafter "CRWS"). A copy of the Sixth ILA Revision, dated September 20, 2006, which summarizes all previous

ILA's, along with the initial 2006 document is attached hereto as composite Exhibit "D."

14. According to the provisions of the September 20, 2006 ILA, FKAA must establish fiscal controls and fund accounting procedures that comply with generally accepted government accounting principles that are satisfactory to the CLERK. *See* provision 3 of the September 20, 2006 ILA attached as composite Exhibit "D."

15. During the time frame of 2000-2006, FKAA hired Dave Matthews Consulting (hereinafter "Matthews Consulting"), a Civil Engineering company to perform cost and engineering analysis regarding parts of the CRSA that encompassed Upper Sugarloaf Key, Cudjoe Key, and Summerland Key - referred to as the Inner Island areas.
16. FKAA has, on several occasions, held public meetings to discuss the use of "gravity" systems for the CRSA. FKAA also promoted the use of "Gravity Sewer" for the CRSA on their website and in print advertising. A copy of the "Gravity Sewer Lateral Connection Construction Packet" for the CRSA is attached as Exhibit "E."
17. Up until January 2013, all of our current County Commissioners claim that they were "unaware" that dense subdivisions, such as Cudjoe Gardens, would be receiving "grinder pump" Low Pressure Systems ("LPS") instead of the gravity systems.
18. However, in March of 2011, FKAA applied for and was issued a permit by

the Florida Department of Environmental Protection ("FDEP") for the development of the Cudjoe Wastewater System. The permit indicates that FKAA intended to install 291 E/One simplex grinder pump stations in Cudjoe Key. A copy of the April 11, 2011 FDEP permit is attached hereto as Exhibit "F."

-
19. FKAA and MONROE COUNTY intentionally failed to disclose this information at public meetings and intentionally promoted misinformation on the FKAA website in order to keep the public in the dark about their plans regarding the CRSA.
 20. Section 62-503.700 of the Florida Administrative Code specifically requires that the public be made aware of the specific system they will be receiving. The purpose of this provision is to prevent the very type of bait and switch that FKAA and MONROE COUNTY are attempting to do.
 21. At no time prior to January 2013 has the public received accurate information on alternatives, costs, or risks of the grinder pump technology they are now forced to accept.
 22. On January 15, 2013, FKAA entered into a contract with Giannetti Contracting Corporation for the construction of the Cudjoe Regional Wastewater System. A copy of the January 15, 2013 contract is attached as Exhibit "G."
 23. According to the "Sequence of Work" provided by CH2M HILL, which Giannetti, by contract is required to follow, Giannetti is prohibited from

working in Basin D, where Cudjoe Gardens is located, until 100% of the work in Basin C is complete. Relevant portions of the CH2M HILL Sequence Requirements are attached hereto as Exhibit "H."

24. On March 13, 2013, FKAA held a public meeting which discussed the construction schedule for Basin D. According to FKAA, work would not begin on Basin D until approximately January 2014. A copy of the relevant portions of the FKAA meeting report is attached as Exhibit "I."
25. FKAA and Giannetti have now accelerated the schedule for construction in Cudjoe Gardens, and other areas.
26. Against the terms of the "Sequence Requirements," construction that was originally scheduled for 2014 is now being expedited for the fall of 2013 (with Basin C being only around 50% completed).
27. On September 10, 2013, Giannetti began unloading materials in Cudjoe Gardens and work is now currently underway - four months ahead of schedule.
28. DRABINSKI has sought relief in the Bond Validation case (CASE NO.: 13-CA-521-K) which held a hearing on September 10, 2013. At the conclusion of that hearing, this Court indicated that written summaries are due 30 days after the transcripts are ready, after which this Court will make a decision.
29. Given the advanced pace of the construction, FKAA is intentionally attempting to complete Basin D making any decision by the Court in the

Bond Validation, and in this action, moot.

30. Undeniably, FCAA and MONROE COUNTY are attempting to install grinder pumps and an associated LPS's in parts Cudjoe Gardens (and other areas of the CRSA) using a fabricated and flawed analysis, and on a schedule that is not in accordance with the Giannetti "Sequence of Work" or with statements made at the public hearings.

31. Provision 22 of the September 20, 2006 ILA- "Public Access" - states that MONROE COUNTY and FCAA shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession, etc. Further it states that the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by the FCAA. See provision 22 of Exhibit "D."
32. The first sets of drawings, designed by Matthews Consulting and made available to the general public, are dated November 15, 2012. Drawing G-4, titled "Hybrid System Location Map" was included in this developed, showing, for the first time to the public, the locations of gravity and LPS. The areas of the map presented below bounded in solid lines are LPS and the dashed lines are gravity. A copy of the "Hybrid System Location Map" is attached hereto as Exhibit "J."
33. With regard to Cudjoe Gardens, a dense, homogenous subdivision of almost 400 homes, about 40% of the homes are proposed as LPS.
34. On May 21, 2013 and on July 15, 2013, Public Records Requests were sent

to FCAA by Mr. Walter Drabinski and Dr. Jean Gormley, respectively.

35. To date, only small percentage of the 40 requests have been responded to.

36. MONROE COUNTY is fully aware that FCAA failed to comply with the public records request dated May 21, 2013 and July 15, 2013 and MONROE COUNTY refuses to terminate the ILA as provided in subsections 22 and 31 of the September 20, 2006 ILA.

37. Because of the lack of response, by FCAA, to the records request, a group of seven interested residents visited the FCAA office in Key West and asked to be given access to the CRWS engineering files.

38. Upon review of the engineering files, a June 18, 2013 email from Matthews Consulting to Mr. Tom Walker, of FCAA (with a revised set of analysis of Cudjoe Gardens and other subdivisions) was discovered. A copy of the June 18, 2013 email with analysis is attached as composite Exhibit "K."

39. The complete analysis, which was transmitted to the County Commissioners, and others, consisted of fabricated numbers.

40. Totals of some of the columns of numbers in the cost spreadsheets did not add correctly. As this document is in spreadsheet format, the miscalculations can only happen through a determined effort to make the modification.

41. In three cases where estimated costs for mobilization, insurance and permitting are done on a percentage of the cost basis, the actual amount for the all gravity system were higher than the calculation should have

been, while the hybrid numbers were correct.

42. In the assumptions used for the LifeCycle model, Matthews assumed that the fully loaded cost of a full time FKAA technician is \$100 per hour or about \$180,000 per year. This compares with similar numbers for County employees of \$60,000 to \$80,000 per year.
43. Matthews assumes it will cost \$40/year/grinder pump for maintenance.

This is \$84,000 per year for the 2,800 grinders throughout the CRSA. This is, by their calculations, less than one-half of an employee.
44. Conversely, Matthews calculates that the maintenance on lift stations for the gravity system will cost \$7,500 per year per station for 275 stations or over \$2 million per year. The lift stations use the exact same pumps as the grinder units, but will cost, assuming four pumps per lift station, \$1,875 per pump to maintain.
45. Ironically, these are on public property with easy access but are 47 times more expensive to maintain.
46. Matthews also assumes that the grinder pump at one's home will last 12 years and cost \$2,000 to repair, but that the grinder pump in a lift station will only last five years and cost \$6,000 to repair.
47. DRABINSKI, using the same numbers provided by Matthews Consulting in its June 18, 2013 report and spreadsheet, calculated the figures and came to a completely different answer for the gravity systems. A copy of the Drabinski report is attached hereto as Exhibit "L."

48. It must be assumed that the calculations for the gravity systems, in the Matthews Report, were intentionally modified so that FKAA and MONROE COUNTY could “pass off” the Grinder Pumps and Hybrid Systems as the overall “best” systems for use in the CRSA.
49. According to the September 20, 2006 ILA, The CLERK has responsibility to address issues such as this.
-
50. Either the CLERK is aware of these blatant miscalculations and is protecting FKAA and MONROE COUNTY, or the CLERK is oblivious to what is occurring and is not fulfilling its obligations to the public.

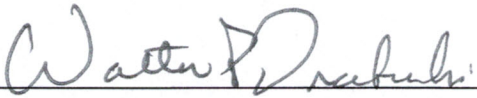
WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Enter an immediate Order requiring FKAA to comply with the May 21 and July 15, 2013 records request, pursuant to Chapter 119 of the Florida Statutes;
- B. Enter an Order requiring MONROE COUNTY and FKAA to fulfill its obligations to public and install gravity systems in the areas of CRSA; or alternatively,
- C. Enter an immediate and temporary 90 day injunction against FKAA for work commencing on Basin D - in compliance with the schedule requirement of the Giannetti Contract - to allow for a review, by the CLERK, of the Matthews Consulting calculations and other related documents to determine what system(s) is/are more fiscally sound for

use in the CRSA, pursuant to the September 20, 2006 ILA; and

D. Plaintiff, DRABINSKI further requests that the Court enter an Order awarding costs and such other and further relief as the Court deems just and appropriate.

Respectfully Submitted:



Walter P. Drabinski
20844 4th Ave., West
Cudjoe Key, FL 33042
Tel 305-394-0784
Fax 305-744-3450
wdrabinski@vantageenergyconsulting.com