

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20020410

1. REQUESTED MOTION:

ACTION REQUESTED: Consider a request by the owner of Deep Lagoon Boat Club Ltd. (Marina) to adjust the Solid Waste Facilities Assessment for fiscal years 2000 and 2001 and authorize the Solid Waste Division to issue a refund.

WHY ACTION IS NECESSARY: BOCC action is required to adjust this assessment for years preceding the current fiscal year.

WHAT ACTION ACCOMPLISHES: Provides a reduction in the assessment for this property for the subject time period.

2. DEPARTMENTAL CATEGORY: SOLID WASTE
COMMISSION DISTRICT #: CW

A8A

3. MEETING DATE:

04-30-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE 00-20
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER:
- B. DEPARTMENT: Lee County-Public Works
- C. DIVISION/SECTION: Solid Waste Division
- BY: Lindsey J. Sampson DATE: 4/18/2002

7: BACKGROUND: In November 2001, the current owner of the Deep Lagoon property requested the Solid Waste Division to review the correctness of the fiscal year 2002 SW assessment. The owner provided documentation reflecting the level of SW collection service for the previous 12 month time period and the SW Division verified collection service with the franchise hauler. An adjustment (reduction) to the SW Assessment was determined to be appropriate and a revised bill was issued changing the assessment from \$13,783.00 to \$1,888.10 (Category E to Category C).

Subsequently, the owner requests an additional adjustment to the SW Assessment for the previous two fiscal years, 2000 and 2001. The SW assessments levied and paid for these years was \$13,981.45 and \$14,778.07 respectively (category E, assuming no early payment discount). The SW assessment for fiscal year 1999 was \$1,860.03 indicating an assessment category C for that year. The property owner has supplied documents indicating that the previous property owner had applied for an assessment adjustment in September 1995. It appears that the assessment category was changed (upward) by the Property Appraiser's office after the FY 1999 assessment.

In as much as the Solid Waste Facilities Assessment is based upon the customer's use of the system and benefit to the affected property, Deep Lagoon is entitled to an adjustment to the FY2000 and FY2001 assessments. Because special assessments "run with the Land" and are not personal in nature, staff considered recommending that a credit be given to the affected properties for the difference between the incorrect category rate paid in 2000 and 2001 (Category E) and the adjusted category C. The total credit amounts to approximately \$ 24,827.78 and would be applied to the properties assessment bills in the future until exhausted. However, due to the large amount of the credit and the difficulty of tracking the credit draw-down for the next ten years, staff recommends the issuance of a refund less any outstanding delinquent assessment.

8. MANAGEMENT RECOMMENDATIONS: Approve SW Assessment adjustment for fiscal years 2000 and 2001.

9. RECOMMENDED APPROVAL

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
<i>J. Lavender</i> Date: 4-18-02	N/A Date:	N/A Date:	N/A Date:	<i>[Signature]</i> 4/18/02 Date:	<i>[Signature]</i> P.M. 4/18/02	<i>[Signature]</i> 4/18/02	<i>[Signature]</i> 4/18/02	<i>[Signature]</i> 4-18-02	<i>J. Lavender</i> Date: 4-18-02

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

REC'D.
by CO. ATTY.
4/18/02
10 23 AM
CO. ATTY.
FORWARDED TO:
10 45 AM
C. J. [Signature]

RECEIVED BY
COUNTY ADMIN.
4-18 10:44A
COUNTY ADMIN.
FORWARDED TO:

**Knott, Consoer, Ebelini
Hart & Swett, P.A.**
ATTORNEYS - AT - LAW

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Thomas B. Hart
H. Andrew Swett

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Director of
Zoning and Land
Use Planning
Michael E. Roeder, AICP

March 8, 2002

VIA HAND DELIVERY

David Owen
Assistant County Attorney
Lee County Attorney's Office
P.O. Box 398
Fort Myers, FL 33902-0398

Re: Lee County Non Ad-Valorem Solid Waste Assessment
Strap Number 29-45-24-00-00011.002A

Dear Mr. Owen:


In furtherance of our telephone conversation last week, please find enclosed a letter and additional documents from Kathy Ruff, Operation Manager for Deep Lagoon Boat Club. Ms. Ruff's letter includes documents pertaining to a previous adjustment in 1995 due to a previous incorrect classification of the marina regarding its waste generation factor.

Again, Deep Lagoon Boat Club has filed requests for adjustments of its 1999, 2000 and 2001 special assessments. The adjustment for 2001 is the only adjustment that has been made thus far. Deep Lagoon had been over-assessed by \$11,895.55 in 2001, based upon an incorrect classification. Lee County Solid Waste Division has now correctly classified Deep Lagoon as a Class C generator rather than a Class E generator, which Ms. Ruff was told is applied to Southwest Florida International Airport. The adjustment for 2001 lowered the annual assessment from \$15,783.66 to \$1,888.11.

Deep Lagoon paid Solid Waste Assessments of \$13,981.45 in 1999 and \$14,788.07 in 2000. Based on the 2001 adjustment, Lee County has charged Deep Lagoon more than seven times its correct solid waste assessment for two consecutive years. On behalf of Deep Lagoon, we again request a refund of the excess amounts assessed by Lee County. As the County's incorrect assessment scheme discriminated against this property owner without a legal basis in these two years, and bestowed no commensurate benefit, a refund is required.

Very truly yours,

KNOTT, CONSOER, EBELINI, HART & SWETT, P.A.


Mark A. Ebelini
MAE/bf
Enclosure
cc: Kathy Ruff

Fax/Copy to:

JOY
J. LAVENDER
L. SAMPSON

THANKS. DM
D.



**INTEROFFICE MEMORANDUM
FROM
SOLID WASTE DIVISION
Phone: (941) 338-3302 Fax: (941) 461-5871**

Date: March 7, 2002

TO: David Owen, Esq.
Assistant County Attorney

From: Lindsey J. Sampson, P.E.
Director

SUBJECT: SW Disposal Facilities Assessment for Deep Lagoon Marina

In November, 2001 Deep Lagoon Marina requested the Solid Waste Division to review its SW Facilities assessment to determine if an adjustment (reduction) could be made. The marina's management provided invoices for solid waste services for the previous 12 months and the Division used standard procedures to determine the amount of waste material generated from this property. The Division determined that an adjustment was proper and the necessary change was forwarded to the Property Appraiser for processing (see attached).

Following the subsequent issuance of a revised tax bill, the marina's management again contacted the SW Division to inquire about making further adjustments to previous years assessments. SW staff responded that such adjustments were not in accordance with general County policy since there had been no apparent requests initiated by the marina during the previous years. It was explained that adjustments to assessments are made, with sufficient and proper documentation, for the current year but not for past years. The Division informed the marina that such adjustment requests are the responsibility of the property owner or management and must be submitted in a timely fashion. Generally, the Division accepts and reviews adjustment requests for six months following the issuance of the tax bills, though longer periods of time (within the current billing year) are allowed due to extenuating conditions. However, any adjustment made is based on the submittal of sufficient information during the current assessment year.

I reviewed this issue with two of our staff members. Mr. Rick Clontz was the Environmental Specialist that monitored that area of the County from 1995 to 2000. Mr. Eric Tscherteu has covered that area since 2000. Mr. Clontz recalls visiting Deep Lagoon Marina during 1995/1996 to inquire about its SW assessment (both as a County representative and as a customer). The marina's management never responded to Mr. Clontz's inquiries.

The SW Division does not monitor individual business' waste generation and therefore, does not verify the correctness of assessments for each individual property. The SW assessment category system is based on the average waste generation from "similar business types", then the category generation factor is applied to the effective square feet of each business with a category. The establishment of a business within a category is based on field sampling and knowledge of waste generation magnitudes for different types of businesses. The category

Memo to Mr. Owen

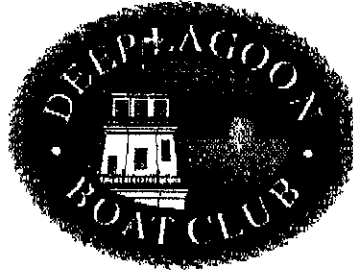
March 7, 2002

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generation factor is established based on a range of generation amounts from a sampling of similar businesses. This system was established in Lee County in October, 1995 and was based on a report provided by Malcolm Pirnie, Inc. in July, 1995. This report has had several updates for certain business types since that time.

It is not practical to establish individual assessments for each individual business based on individual generation amount. This is the purpose for SW Staff to review individual account information if and when a business contacts the Division for questions or assistance. The County's SW assessment system is a fair and representative system and allows for modification if required. It is based on average generation amounts for similar business types within specific categories. However, a business should not rely on the County's staff to monitor and verify its individual assessment amounts.

Cc: J. Lavender
B. Kantor
E. Tscherteu



March 4, 2002

Mr. Mark Ebelini
 Knott, Consoer, Ebelini, Hart & Swett, P.A.
 1625 Hendry Street, Third Floor
 Fort Myers, Florida 33901

RE: Lee County Non Ad-Valorem Solid Waste Assessment

Dear Mark,

Regarding our conversation last week you asked me to clarify a few items.

The Lee County Department of Solid Waste did inform Deep Lagoon Marina of a separate and incorrect classification and advised Deep Lagoon to apply for an adjustment. This event occurred in 1995 while the marina was under previous ownership by the Minnelusa Company. Rick Clontz, of the Department of Solid Waste, informed Tom Mauch -- who at that time was the Harbormaster and still is, that he would need to file an adjustment to correct the error. Deep Lagoon filed and the assessment was adjusted and approved. The paperwork is attached. Since then, no one has approached the marina regarding the need for an adjustment, and I have confirmed this with Rick and Tom.

Sometimes prior to our 1999 tax bill, I do not recall the exact date; a Lee County Property Appraiser came to inspect the property. I showed him an aerial photograph and we discussed the areas that were owned by Deep Lagoon Boat Club, Ltd. The property used to be billed on numerous tax bills and they were consolidating the property to one tax bill.

Also that year our DRI application for additional zoning was approved. Since the property appraiser had inspected our property and our DRI was approved we assumed the increased tax bill was in relation to those two events. We had no reason to believe that the county would again incorrectly classify Deep Lagoon since the matter had already been addressed and adjusted.

Please contact me with any further questions.

Sincerely,

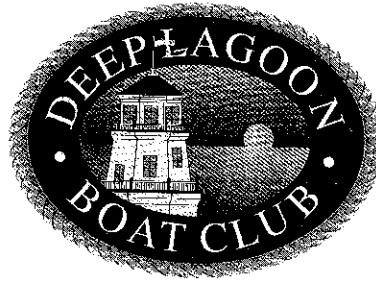
Kathy Ruff
 Operations Manager

Enclosures

A Condominium For Your Boat!

Deep Lagoon Boat Club, Ltd.
 Edward J. Ruff Development, Inc., General Partner
 Edward J. Ruff Realty, Inc.
 Branch Office: 14030 McGregor Boulevard, Ft. Myers, FL 33919
 (941) 454-BOAT Fax (941) 454-2992

FORWARDED TO: David Owen



January 22, 2002

Commissioner Doug St. Cerny
Lee County Commission, District 2
P.O. Box 398
Fort Myers, Florida 33902

RE: Annual Non-Ad Valorem Solid Waste Management Assessment

Dear Commissioner St. Cerny,

I am writing today to ask for your assistance in a matter involving the Lee County Waste Management annual ad valorem tax assessment. I have contacted Lindsey Sampson, Director of Waste Management, and he has expressed that he is unable to assist us.

Since 1999, we have been incorrectly assessed for solid waste services and have overpaid more than \$24,000.00. From my discussions with Waste Management, it appears we have been incorrectly rated as a "class E" property since the 1999 property tax bill, until the error was discovered by our office late last year. We did not give ourselves this rating; Waste Management determines and applies this rating. To put this error in perspective, an operation the size of SW Florida International Airport is given this rating, not a marina of our size.

✓ We filed "Adjustment Forms" for 1999, 2000, and 2001 property tax bill. The 2001 adjustment was the only adjustment they responded to, and we had been over-billed \$11,895.55. Waste Management has now correctly rated us as a "class C" property.

In 1999, we were assessed and paid \$13,783.66, and in 2000, we were assessed and paid \$14,778.07 to the Division of Solid Waste. These payments include more than \$24,000.00 in incorrectly assessed and billed services that were not a responsibility of Deep Lagoon Boat Club. In my conversation with Mr. Sampson, he has said, "Waste Management is not in the practice of issuing refunds."

A Condominium For Your Boat!

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Commissioner St. Cerny, Page two of two; January 22, 2002

The amount of more than \$24,000.00 does not fall in the category of a minor oversight and we believe the overpayment should be refunded. Any assistance you can be in this matter would be greatly appreciated. I can be reached at 941-454-2628.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Ruff".

Kathy Ruff
Operations Manager

Enclosures