

FILE 2796 — April 21, 2023

VOTING CONFLICT

MEMBER OF CITY COUNCIL VOTING ON SEPTIC TO SEWER CONVERSION PROJECT

To: *Lorraine Koss, Councilmember (City Council of Cocoa)*

SUMMARY:

A voting conflict would be created under Section 112.3143(3), Florida Statutes, where a City Councilmember votes on whether the City should proceed with a septic-to-sewer conversion project that would involve such a conversion for her residence because the Councilmember would receive guaranteed funds (gains) from the City and would have a mandatory outlay of funds she would personally incur if the project were underfunded (losses), thus, incurring a special private gain or loss. Guidance is also provided on related votes. Referenced is CEO 78-74.

QUESTION:

Would a City Councilmember have a voting conflict under Section 112.3143(3)(a), Florida Statutes, if she voted on matters concerning a septic to sewer conversion project that would affect her residence?

This question is answered as follows.

In your letter of inquiry and additional information provided to our staff, you indicate that you serve as City Councilmember in the City of Cocoa, Florida. You inquire whether you would have a prohibited voting conflict if you voted on various matters pertaining to a project, the goal of which is to lower the level of pollution in the Indian River Lagoon.

Brevard County has adopted a plan, the Save Our Indian River Lagoon Project ("SOIRL" Plan), which includes multiple projects designed to restore the condition of the Indian River Lagoon. One of these projects, the J & K Septic to Sewer Conversion Project,¹ would affect 88

¹ The J & K Project is one of approximately 42 projects within Brevard County that have been identified for septic system removal as part of the SOIRL Plan. The SOIRL Plan estimates that the 42 projects cumulatively will reduce 95,816 pounds of nitrogen from the Indian River Lagoon

residences along a part of Indian River Drive, one of which is yours. The J & K Septic to Sewer Conversion Project would entail: 1) constructing a new sewer line in the Indian River Drive public right-of-way; 2) constructing lateral sewer lines to connect each of the 88 residences to the new sewer line; and 3) removing the existing septic tanks from the residences.

With regard to funding, the County passed and implemented a 0.5-cent sales tax referendum for the SOIRL Plan in 2017. At the time of your request, there was a maximum of \$6,167,373 SOIRL grant funds (comprised of revenue generated from the sales tax) available to the City for allocation to the J & K Septic to Sewer Project, provided the lot owners of all 88 residences agree to convert from septic to sewer. If the lot owners of any of the 88 residences do not agree to participate in the J & K Project, the amount of available SOIRL grant funds will be reduced in proportion to the percentage of residences that do not participate.² In order to obtain the maximum amount of SOIRL grant funding, the City plans to make connection to the sewer mandatory for the 88 residences.³ At the time of the request, the estimated cost for construction of the sewer line, construction of the lateral lines and removal of the septic tanks for the 88 residences was between \$9,556,320 and \$11,956,320. Thus, even if the maximum amount of SOIRL funding is received, it will not be adequate to complete the J & K Project without additional funding. According to you, the City is hoping to secure additional funding through grants, but the City does not presently have any arrangements for additional funding. Ultimately, if participation

per year, including a 3,748 pound reduction from the City of Cocoa J & K Project. The removal of nitrogen will help lower the amount of pollution in the Lagoon.

² For example, if the lot owners of only 50% of the residences agree to convert from septic to sewer under the plan, the \$6,167,373 SOIRL grant funds available to the City for the J & K Project would be reduced by 50%.

³ The proposed sewer line will initially only serve the 88 residences along Indian River Drive, but eventually, in order to move forward with the SOIRL Plan, the City Council will need to make connection to sewer mandatory City-wide, with a few exceptions. It is not known whether there would be funding for this project.

mandatory and there is not enough funding to construct the lateral lines to connect the 88 residences to the sewer main line and to remove the septic tanks from those residences, the City will require the lot owners of the 88 residences to pay any remaining costs.

The cost of connecting the residences to the sewer line and removing the septic tanks will vary on a lot-by-lot basis depending on each lot's characteristics and complexities (e.g., lot size, depth and elevation, obstructions, whether there is coquina rock under the residences, the location of and accessibility to the septic tanks, the length of lateral pipe required, etc.). During a preliminary field inspection of the 88 residences by City staff, the lots were placed into four groups (or "tiers") as a means of demonstrating the potential range of estimated costs to the homeowners. The estimated amount of PVC line that would be required for Tier 1 was 50 feet. The estimated amount of line required increased in Tiers 2 and 3 and to an estimated amount 275 feet for Tier 4. The estimated cost per lot for constructing the lateral lines and removing the septic tanks for Tier 1 (comprised of 18 lots) was \$24,420, which increased to \$62,640 for Tier 4 (comprised of 4 lots).⁴ The City has not determined which tier your connection would fall in, though, after privately obtaining a professional estimate, you estimate the cost to construct the lateral line and remove the septic tank for your residence to be \$23,160, which would place you in Tier 1.

The City Council is considering three options with regard to the J & K Septic to Sewer Conversion Project. The first option would be to move ahead with the Project, which would include mandating that the lot owners of the 88 residences connect to the sewer and pay funding shortfalls in the event funding obtained by the City is exhausted. Under this option, there would

⁴ These estimates would include the PVC line, removal of the septic tanks, road base fill, driveways, decks and sidewalks, replacement of trees and shrubs, sod, irrigation repairs, a bore service line and a private pump, if necessary.

also be a possibility that the City Council would initiate court action against those who refused to comply and/or to pay their private funding obligations.

The second option would be for the City Council to vote to withdraw from the J & K Project. If the City withdraws from the J & K Project, the lot owners of the 88 residences could apply for and receive funding from the County (in amounts up to \$18,000 per residence) to purchase Advanced Septic Treatment Systems that satisfy the advanced requirements for such replacements as outlined in the SOIRL Plan.⁵

The third option would be for the City Council not to take any action on the matter at this time and, in essence, postpone making any decision. The City would continue to maintain the \$6,167,373 SOIRL grant funds during the delay, but the lot owners of the 88 residences would not be able to apply for or receive any advanced septic replacement funding from the County.

Under these circumstances, you ask whether you would have a voting conflict if you voted on any of these three options.

Option 1: Moving forward with the J & K Septic to Sewer Conversion Project

Let us first examine Option 1, i.e., voting on whether to move ahead with the J & K Septic to Sewer Conversion Project, which would require the lot owners of the 88 residences to participate in the program (even if the program is not fully funded). Section 112.3143(3)(a), Florida Statutes, is the portion of the voting conflicts law within the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes) that is applicable to local, elective, public officers, such as City Councilmembers. Section 112.3143(3)(a), Florida Statutes, provides:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his

⁵ Utilizing these septic replacements would not result in the complete removal of unwanted nutrients in the Indian River Lagoon.

or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Section 112.3143(1)(d), Florida Statutes, defines "special private gain or loss" as:

[A]n economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

The statute prohibits you from voting on any measure that will inure to your "special private gain or loss" or that you know would inure to the special private gain or loss of a principal by whom you are retained, your relative, or your business associate. There is nothing in the facts presented to indicate that a principal by whom you are retained, a relative, or a business associate

would be affected by a vote. Therefore, we are only concerned with whether the vote would create a "special private gain or loss" for you. If so, you would incur a voting conflict.

When determining whether a private gain or loss might be "special," one must consider the size of the class that will be affected by the vote, the degree to which all members of the class will be affected, and the degree to which the officer will receive a greater benefit or harm when compared to the other members of the class. In your case, there are 88 residences that would be affected by this vote, but you state that your residence would be in Tier 1, which is only comprised of 18 lots. The estimated cost of removing the septic tanks and installing the lateral lines to connect the residences to the sewer main line is the lowest for the lot owners in Tier 1, i.e., that of \$24,420 or less, compared to \$62,640 for those in Tier 4.

It is not known at this time, and will not be known at the time of the vote, whether additional funding will eventually be obtained such that the cost of removing the septic tanks and installing the lateral lines for the 88 residences will be fully funded. One must assume that, at the time of the vote, it is a possibility that the Project will not be fully funded, given that the project is not fully funded now. It is also not known whether, in the event of partial funding, any available funding would be disbursed in equal amounts to the lot owners of the 88 residences or whether it would be disbursed proportionally in relation to each property's projected expenses. In either event, if the Project is not fully funded, your out-of-pocket costs will be lower than those of the lot owners of at least 70 of the residences (i.e., those in Tiers 2, 3, and 4)⁶ because the total cost of your septic-to-sewer conversion (\$23,160) would be lower than that of theirs.⁷ One of the factors

⁶ The phrase "at least" 70 lot owners is being used because the cost of your septic-to-sewer conversion may be less than that of others in your Tier (Tier 1), which would make the number of lot owners having to pay more than you greater than 70.

⁷ For example, if the 88 lot owners are given the same amount, e.g., \$15,000 each, your estimated out-of-pocket cost would be \$8,160, compared to an estimated \$47,640 for the lot owners in Tier

that must be considered when determining whether a "special private gain or loss" exists is the degree to which the officer will receive a greater benefit or harm compared to other members of the class. Your financial loss, i.e., the out-of-pocket costs you will have if the Project is not fully funded, will be significantly lower than that of at least 70 of the 88 lot owners. You would, thus, have a "special private loss" under Option 1 and would, therefore, would have a prohibited voting conflict if you voted on it.

In light of this, prior to the vote, if it occurs at all, you must publicly state the nature of your interest in the matter at the City Council meeting, abstain from voting on the matter, and file Commission on Ethics Form 8B, "Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers," with the person responsible for recording the minutes of the meeting within 15 days after the vote occurs.

Option 2: Withdrawing from the J & K Septic to Sewer Conversion Project

Under Option 2, the City Council would vote on whether to withdraw from the J & K Septic to Sewer Conversion Project. If the City Council chooses this option, the City would send a letter to the Brevard County Natural Resources Department informing it that the City was withdrawing from the J & K Project. There would be no City requirement, however, for the lot owners to install these Advanced Septic Treatment Systems on their properties or to take any other action with regard to their existing septic systems if the City Council voted for Option 2.

Once Option 2 is effective, the lot owners of the 88 residences would then be able to apply individually to the County to receive up to \$18,000 per lot if they wanted to install Advanced Septic Treatment Systems, which would reduce the nitrogen load on their properties and, by

4. Similarly, if all lot owners received 50% of their total out-of-pocket costs, your estimated out-of-pocket cost would be \$11,580, compared to an estimated \$31,320 for those in Tier 4.

extension, the nitrogen emanating to the lagoon. The exact amount of County funding a lot owner would be eligible to receive would depend on the estimated nitrogen load of the property and the characteristics of the lot itself, as explained earlier; these costs have not been estimated by the City because the City would not be involved.

We note that Options 1 and 2 are mutually exclusive; the City Council's undertaking of one option necessarily precludes undertaking the other. Thus, a vote concerning Option 2 necessarily affects your special private gain or loss because Option 2 precludes your receipt of the guaranteed gains from the City's disbursement of the SOIRL funds and precludes the mandatory outlay of funds you would personally incur if the program in Option 1 was underfunded (as it currently is). For that reason, we find you will have with a voting conflict if the City Council is presented with a vote on Option 2. If this occurs, you will need to declare the nature of your interest in the matter at the City Council meeting, abstain from voting, and file Commission on Ethics Form 8B within 15 days after the vote, as described above.

Option 3: Delaying taking any action on the J & K Project at this time

Under Option 3, the City Council would delay making any decision regarding the J & K Septic to Sewer Conversion Project. The City would not lose access to the \$6,167,373 SOIRL grant funds in the interim, but the lot owners of the 88 residences would not be able to apply for or receive any funding from the County for the Advanced Septic Treatment Systems, as was the case in Option 2.

We have frequently opined that votes that are preliminary or procedural do not create a conflict of interest for a public officer. For example, in CEO 78-74, we opined that a school board member's vote to defer consideration of a matter until the school district could further investigate

the matter before voting to make a final determination was entirely procedural and, therefore, did not create a special private gain or loss for him or her.

Here, as was the case in CEO 78-74, Option 3 is a vote that merely defers the agency's consideration of the matter so that a final determination can be made later. A vote on Option 3 would be entirely procedural and would not create a voting conflict for you.

Your question is answered accordingly.⁸

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 21, 2023, and **RENDERED** this _____ day of April, 2023.

Glenton "Glen" Gilzean, Jr., *Chair*

GG/kbh/ks

cc: Lorraine Koss
Anthony A. Garganese, Esq.

⁸ Once the program under Option 1 has more definition, we encourage you to contact Commission staff to seek guidance as to whether the program will be a conflict of interest under Section 112.313(7)(a), Florida Statutes. This analysis will hinge on details that currently are undecided, according to your opinion request, including whether the City will contract directly with the lot owners and whether the contract will pertain to more than the purchase of utilities services.

Heyward, Katharine

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Wednesday, November 23, 2022 3:59 PM
To: Heyward, Katharine; zuilkowski.steven@leg.state.fl
Cc: Anthony Garganese (OrlandoLaw)
Subject: Request for Conflict of Interest Guidance
Attachments: J & K Statement of Facts.pdf

Dear Esq. Heyward,

At the suggestion of the City of Cocoa's attorney, I am providing additional detailed information related to my September 21, 2022 request for a written conflict of interest opinion because I intend to rely on the guidance being provided by your office. This matter is currently scheduled to be heard by the City Council on Tuesday, November 29, 2022. Due to time constraints regarding grant funding availability and immediate pending septic system decisions affecting some of the interested parties, this matter needs to be considered by the City Council soon.

Below is my executive summary of the facts and matter being considered by the City Council. However, I worked with the City Attorney to also prepare a more detailed and complete factual statement for your consideration which is attached to this email.

The Cocoa City Council will decide among three options for the J & K Septic to Sewer Project. The 3 options are: (1) Withdraw from the project and let homeowners submit and qualify for advanced septic treatment funding from SOIRL; (2) Require mandatory hook up of all homes identified in the project and allow the city to apply for SJRWMD and FDEP funding while also specifying whether individual homeowners or utilities/utilities rate payers would be responsible for any cost overruns related to the project; or (3) Delay a decision to move forward with the project.

I am the district 4 Councilperson who is one of five voting members on the council. I have previously recused myself on this vote. The project is a part of Brevard County's Natural Resource Department's *Save Our Indian River Lagoon 10-year plan* to stop the flow of pollutants to the Indian River Lagoon. Brevard County voters previously approved 1/2 cent sales tax to provide a funding source for the projects identified in the plan. If Option 1 were to pass and the project is withdrawn, I would be 1 of the 88 homeowners who would immediately be eligible to apply for an individual grant of up to \$18k to upgrade my septic system and would be required to pay tax on any benefit received. If Option 2 were to pass, I would be required to hook up to the sewer line being constructed as part of the project and potentially have all or part of my hook up and septic removal costs paid for by grants while being taxed on any benefit received. I was advised to recuse myself because of the special private gain test including the 1% size of class guidance issued by the Commission on Ethics. If only the 88 single family home owners constitute the class size, my interest would be approximately 1.13%.

Brevard County has identified this stretch of Indian River Drive as a contributor to the pollution levels in the Indian River Lagoon including the existing septic tanks in the subject J&K project area. Projects incorporated in the plan to remove excess nutrients (pollutants) provide a benefit the entire county. \$9 M of the \$12M septic to sewer project as currently estimated by the City will be for installation of the gravity sewer line which becomes a capital asset of the City. The balance of \$3M is estimated to be needed for lateral line

installation and septic tank removal, normally paid by the homeowner. However, grant dollars are available for these lateral lines/septic tank removal and may cover the entire cost of the homeowners' hook-ups. Hook-up costs for each homeowner will vary on a lot-by-lot basis, but have been estimated by the City to cost as low as approximately \$24k to as high as approximately \$63K for 4 homeowners who are identified as being in the worst-case scenario. I do not believe my home is in the group considered a worst-case scenario.

On July 26, 2022, after citizen input and deliberation the vote by the City Council was split equally between options 1 (allow homeowners to apply for advanced septic) and 2 (proceed with the project and require mandatory hook-up) so both options died because a majority could not be reached. Had Option 2 passed, other City Council votes would be required to implement and complete the project.

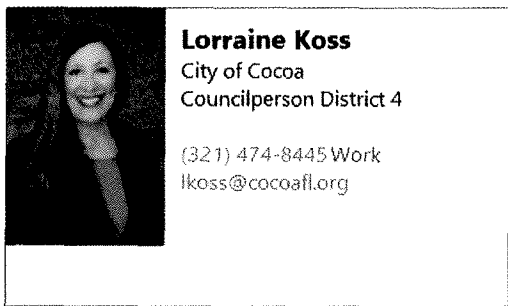
Additional SOIRL grant dollars were just approved by Brevard County to cover an even greater amount of the J&K project costs so the item is now being presented to the Council again on November 29, 2022 with the same options described above.

I respectfully request that your office consider the more detailed and complete factual statement that was prepared with the assistance of the City Attorney, and provide an additional written opinion prior to the November 29, 2022 meeting so I may determine whether I can vote on this important matter.

Thank you, enjoy the holiday, and I hope to hear from you soon.

Lorraine Koss

Cocoa Councilperson District 4



PLEASE NOTE: Florida has a very broad public records law. Most written communications (including contents of emails and email addresses) to or from City of Cocoa officials and employees regarding public business are public records available to the public and media upon request. Your written and e-mail communications may be subject to public disclosure. If you do not want your written and email communications released in response to a public records request, do not send written or email communications to City of Cocoa officials and employees. Instead, contact this office by phone.

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November 23, 2022

Steven Zuilkowski
Deputy Executive Director and General Counsel
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

Re: Councilwoman Lorraine Koss – Request for Conflict of Interest Opinion

Dear Mr. Zuilkowski:

The undersigned is the City Attorney of Cocoa and I am writing on behalf of Councilwoman Koss in her official capacity as a councilmember of the City of Cocoa. Councilwoman Koss appreciates and is in receipt of the informal ethics opinion provided to her by Attorney Katherine Heywood by email, dated October 24, 2022. However, upon further consideration of this important matter to the City of Cocoa, I worked with Councilwoman Koss to develop and provide the following supplemental Statement of Facts for your consideration to determine if this information has any bearing on the previous opinion rendered by your office regarding whether she has a voting conflict under Section 112.3143(3)(a), Florida Statutes, and more specifically whether her potential vote on this matter would inure to her "special private gain or loss" as defined in Section 112.3143(1)(d), Florida Statutes.

Ms. Koss intends to rely upon the written opinion rendered by your office and the City Council will be advised of the opinion as well.

STATEMENT OF FACTS CITY OF COCOA - J & K PROJECT

The City Council is currently scheduled to consider the J&K Septic to Sewer Conversion Project matter at its regular meeting scheduled for Tuesday, November 29, 2022. Given your office's previous attention to this matter, Councilwoman Koss is hopeful that your office will have sufficient time to consider this supplemental Statement of Facts and render an opinion before the scheduled meeting.

1. The backdrop behind the City Council's decision to determine whether to proceed with the subject J&K Septic to Sewer conversion project is the Indian River Lagoon and the Save Our Indian

River Lagoon Project Plan prepared by Tetra Tech, Inc., which was last updated February 22, 2022, and adopted by Brevard County ("SOIRL Plan"). The SOIRL Plan is currently a 200 page document and is updated annually by Brevard County. Relevant excerpts and information from the SOIRL Plan are being provided to provide a more complete understanding of the issues being considered by the City Council.

2. According to the SOIRL Plan, the Indian River Lagoon includes the Mosquito Lagoon, Banana River Lagoon and Indian River. This system connects Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach counties. A portion of the Indian River runs along the eastern shoreline of the City of Cocoa. Additionally, approximately 71% of the Indian River Lagoon area is within Brevard County and provides County residents and visitors many recreational opportunities and economic benefits. The SOIRL Plan also recognizes that the Indian River Lagoon ecosystem is a valued asset not only in Florida but also nationally.

3. The SOIRL Plan provides that the "balance of this delicate ecosystem has been disturbed as development in the area has led to harmful impacts. Stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, septic systems, and excess fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon. These pollutants create cloudy conditions in the lagoon and feed algal blooms, both of which negatively affect the seagrass community that provides habitat for much of the lagoon's marine life. In addition, these pollutants lead to muck accumulation, which releases (fluxes) nutrients and hydrogen sulfide, depletes oxygen, and creates a lagoon bottom that is not hospitable to seagrass, shellfish, or other marine life." (bold/underline emphasis added).

4. While local governments and the St. Johns River Water Management District have implemented projects over the last several decades to try to improve the condition of the lagoon, Brevard County determined that additional funds were needed to implement projects to attempt to improve the deteriorating condition of the lagoon. In further of this funding need, Brevard County placed on the November 2016 ballot a Save Our Indian River Lagoon 0.5 cent sales tax referendum. The referendum passed with more than 60% vote and since January 2017, it is providing a funding stream for the projects listed in SOIRL Plan. This funding stream is being managed by Brevard County and through funding agreements between the County and participating municipalities implementing funding eligible projects identified in the SOIRL Plan.

5. The SOIRL Plan outlines a "portfolio" of local projects "planned to meet water quality targets and improve the health, productivity, aesthetic appeal, and economic value of the lagoon." Generally, the proposed projects are collectively a "multi-pronged approach to reduce pollutant and nutrient inputs to the lagoon from fertilizer, reclaimed water from wastewater treatment facilities, sprayfields and rapid infiltration basins, package plants, sewer laterals, septic systems, and stormwater; Remove the accumulation of muck from the lagoon bottom; Restore water-filtering oysters and clams and related lagoon ecosystem services; and monitor progress to Respond to changing conditions, technologies, and new information by amending the plan to include actions that will be most successful and cost-effective for significantly improving the health, productivity, and natural resilience of the IRL." (bold/underline emphasis added).

6. The SOIRL Plan projects are prioritized and located in several municipal jurisdictions and unincorporated Brevard County. However, implementation of these projects is contingent upon funding raised through the 0.5 cent sales tax. This sales tax funding also allows the County to leverage additional dollars in match funding from state and federal grant programs.
7. The SOIRL sales tax revenue is a limited funding source which is potentially allocated over many potential projects set forth in the SOIRL Plan.
8. Depending on the cost of a particular project, SOIRL funding may not be adequate to cover the entire costs of the project and additional local, state, and federal government, as well as private, funding sources will be necessary to pursue and complete the project, including the City of Cocoa.
9. Further, in many cases, like the situation here, the implementation of the project requires the cooperation, participation and possible local funding from a local municipality because the proposed SOIRL Plan project directly impacts the operation of a municipal utility like stormwater and sewer.
10. In this case, the SOIRL Plan identifies a septic to sewer conversion project for a portion of a residential neighborhood located with the City of Cocoa which is identified as the "J & K Septic to Sewer project." ("J&K Project"). The J&K Project area is depicted on Figure 4-7 of the SOIRL Plan and is attached hereto for reference. See also, attached J&K Project Overview Aerial. The J&K Project is one of approximately 42 projects within Brevard County identified for septic system removal in the SOIRL Plan and has been listed as a potential septic removal project since the original SOIRL Plan was adopted in 2016.
11. The SOIRL Plan estimates that the 42 projects cumulatively will reduce a total of 95,816 pounds of nitrogen from the Indian River lagoon per year including a 3,748 pound reduction attributed to the City of Cocoa J&K Project.
12. The J&K Project requires the City of Cocoa's cooperation, participation and possible local funding because it directly impacts the City of Cocoa's sewer utility. If the City Council gives the direction to proceed with this project, the City of Cocoa would be responsible for designing, permitting, bidding, and constructing the project, and ensuring that it is fully funded through all available sources of money (including SOIRL funding) to be determined depending on the actual costs to complete the project.
13. The number of existing residential homes located within the J&K project area is 88. Councilwoman Koss and her husband own one of the eight-eight lots. See Figure 4-7 attached (Boundaries of the J&K area are denoted by a green line and the subject lots are denoted as red dots).
14. For the J & K project conversion to occur, the City must: (1) construct a new sewer line within the existing Indian River Drive public right-of-way, and (2) on each private lot located along Indian

River Drive, construct lateral sewer lines connecting the home to the City's new sewer line within the Indian River Drive right-of-way and remove each existing home's septic tank.

15. Because the J&K project has not been competitively bid yet, and due to increased inflation and rising construction costs, the costs and corresponding available funding sources for the J&K project are fluid and can only be estimated by the City at this time. See Attached Council Agenda Item and Cost Estimates prepared by City staff. The SOIRL Plan also recognizes that construction costs for septic-to-sewer projects increased significantly since the original plan was developed in 2016, and cost estimates have continued to increase due to construction inflation and supply-chain issues. Challenges associated with constructing sewer within old, narrow rights-of-way filled with existing utilities also drive up costs.

16. There is currently a maximum of \$6,167,373 SOIRL grant funds available to the City to contribute to the J&K Project under the SOIRL Program, provided 100% of the 88 lots agree to participate in the conversion from Septic to Sewer. The amount of available grant funds is reduced proportionately based on the percentage of homes that do not convert within the time period prescribed by the Program. For example, if only 50% of the lots timely convert from septic to sewer, the City will only receive half the maximum amount (\$3,083,686.50). The City will be responsible for securing any unfunded portion of the septic-to-sewer construction project.

17. Of the maximum amount of SOIRL funding available, \$4,607,373 is allocated to cover the public infrastructure costs associated with constructing the new gravity sewer line within the Indian River Drive right-of-way, and the gravity sewer line will become a capital asset of the City. The remaining balance of \$1,560,000 is allocated to the costs associated with constructing the lateral sewer lines and removal of the existing septic tanks on the private lots. The lateral sewer lines will be privately owned.

18. The current City cost estimates for the new gravity sewer line are between \$6.6 to \$8.2 million dollars. This estimate does not include the costs related to the construction of the lateral sewer lines and removal of the septic tank from the 88 private lots. The maximum SOIRL funding is not adequate to complete the J&K project. The City will require additional funding to cover 100% of the project costs from either other private and local, state and federal government sources, which may include City of Cocoa sewer utility funds if approved by the City Council. While the City is striving to find other grant funds to fully fund the J&K project through grants, the City and/or the 88 lot owners may need to contribute funding to cover any costs of the project which are not paid for by grant funds. The cost and funding uncertainty has been heavily discussed at previous City Council meetings by the City Council and interested parties, and may not be resolved until the Council votes to pursue the project and actual costs of the project are then determined and grant funding realized.

19. The current City cost estimate related to constructing lateral sewer lines to connect each lot (home) to the City's new sewer line within the Indian River Drive right-of-way and removing the existing septic tank is approximately \$2,958,320. However, the cost for each lot will vary on a lot-by-lot basis depending on the varying lot characteristics and complexities (e.g., lot size, depth and elevation; obstructions such as walls, fences, trees, and accessory structures; location and

accessibility of existing septic tank; length of lateral pipe run, etc.) related to installing a new lateral service line and removing the existing septic tank for each particular lot. For example, based on a very preliminary field inspection of the 88 lots by City staff, the lots were placed into four, very general groupings to demonstrate the potential range of estimated costs to the homeowners from the lowest group estimate of \$24,420 (18 lots) to the highest group estimate of \$62,640 (4 lots). See attached Cost Estimate. However, actual homeowner costs could be higher or lower for any particular lot depending on the characteristics and complexities of the lot as mentioned above. It is uncertain to which grouping Councilwoman Koss's lot would belong.

20. According to the Utilities Director, the proposed new gravity sewer line to be constructed within the Indian River Drive right-of-way will initially only serve the 88 lots along Indian River Drive. A few undeveloped lots along the right-of-way may be able to connect to the sewer line in the future when the properties are developed, but those lots are not eligible to participate in the J&K Project. Further, there are other lots immediately west of the northern portion of the J&K area with existing septic tanks that the SOIRL Plan identified as contributing a lesser nitrogen loading to the Indian River Lagoon (See Figure 4-7). These lots are not included in the J&K Project, but could conceivably be mandated to use the gravity line in the future, at the property owner's expense, if additional gravity sewer lines are installed within other public rights-of-way for purposes of connecting these additional lines to the sewer gravity line being installed under the J&K Project.

21. As stated in Paragraph 16 above, 100% participation by the 88 lot owners is required for the City to obtain 100% of the maximum SOIRL funding. As such, in conjunction with considering to pursue this J&K Project, the City Council is considering the adoption of an Ordinance to mandate that existing property owners with septic tanks be required to connect to the City's sewer system when sewer is deemed available in accordance with the authority vested in the City pursuant to Section 381.00655, Florida Statutes. At the very least, the mandate will apply to the 88 lot owners in the J&K Project area because of the necessary funding needs to complete the J&K Project. Further, depending on the policy decisions made by the City Council during the ordinance adoption process, it is possible that other property owners with existing septic tanks outside of the J&K Project area will likewise be required to connect to the City sewer system when the City's sewer system is deemed available, and those property owners will have to connect at their expense. For example, there are several lots east of State Road US 1 identified in the J&K Plan as contributing septic nitrogen loading to the Indian River Lagoon (See Figure 4-7), which are located outside the J&K area, that currently have City sewer available but are not connected today because the City does not currently mandate septic sewer conversions. These other lots could be indirectly affected by the J&K Project decision and the sewer mandate. As a matter of policy, the Council may also be considering providing for temporary exceptions in the Ordinance for certain functioning septic systems outside of the J&K area.

22. Another option being considered by the City Council is to withdraw from the J&K Septic to Sewer Conversion project. The withdrawal would then allow the 88 lot owners to seek reimbursement for septic replacements that satisfy the septic advanced treatment requirements outlined in the SOIRL Plan up to a maximum of \$18,000 per lot. The City Council could also choose not to take any action at this time and the delay would not only delay final consideration of the J&K

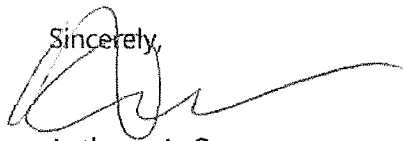
Mr. Steven Zuilkowski
November 23, 2022
Page 6

Project and the \$6,167,373 SOIRL grant funds, but also prohibit any of the 88 lot owners from applying and receiving any advanced septic funding instead.

23. The City Council will be asked to consider voting upon a series of major action items which are necessary to successfully complete the J&K Project including, but not necessarily limited to:

- Providing initial direction to City Staff to move forward with J&K Project including funding decisions related to the costs associated with the gravity sewer line and private lot improvements/septic tank removal, authorization to proceed with implementing action items to complete the J&K Project (see below), and authorization to prepare new policies.
- Adopting an Ordinance mandating sewer connection for the J&K Project area and such other areas deemed necessary by Council and providing enforcement procedures/regulations to compel lot owners to hook-up to the City's sewer system including the recovery of applicable project costs, attorney's fees and enforcement expenses incurred by the City.
- Approving the SOIRL and other grant applications and related funding agreements.
- Approving an award of a competitive bid to a general contractor to construct the J&K Project and approval of the Construction Agreement.
- Approve necessary City fiscal year budget amendments and appropriations related to funding the J&K Project through all available sources of funding.
- Initiating enforcement actions in a court of competent jurisdiction against any of the 88 lot owners who refuse to comply with the sewer hook-up mandate adopted by the Ordinance and/or pay the lot owner's private funding obligations, if any.

Please feel free to contact the undersigned if you have any questions or need additional information.

Sincerely,

Anthony A. Garganese
City Attorney of Cocoa

Encl/

Cc: Councilwoman Lorraine Koss
via email lkoss@cocoafl.gov

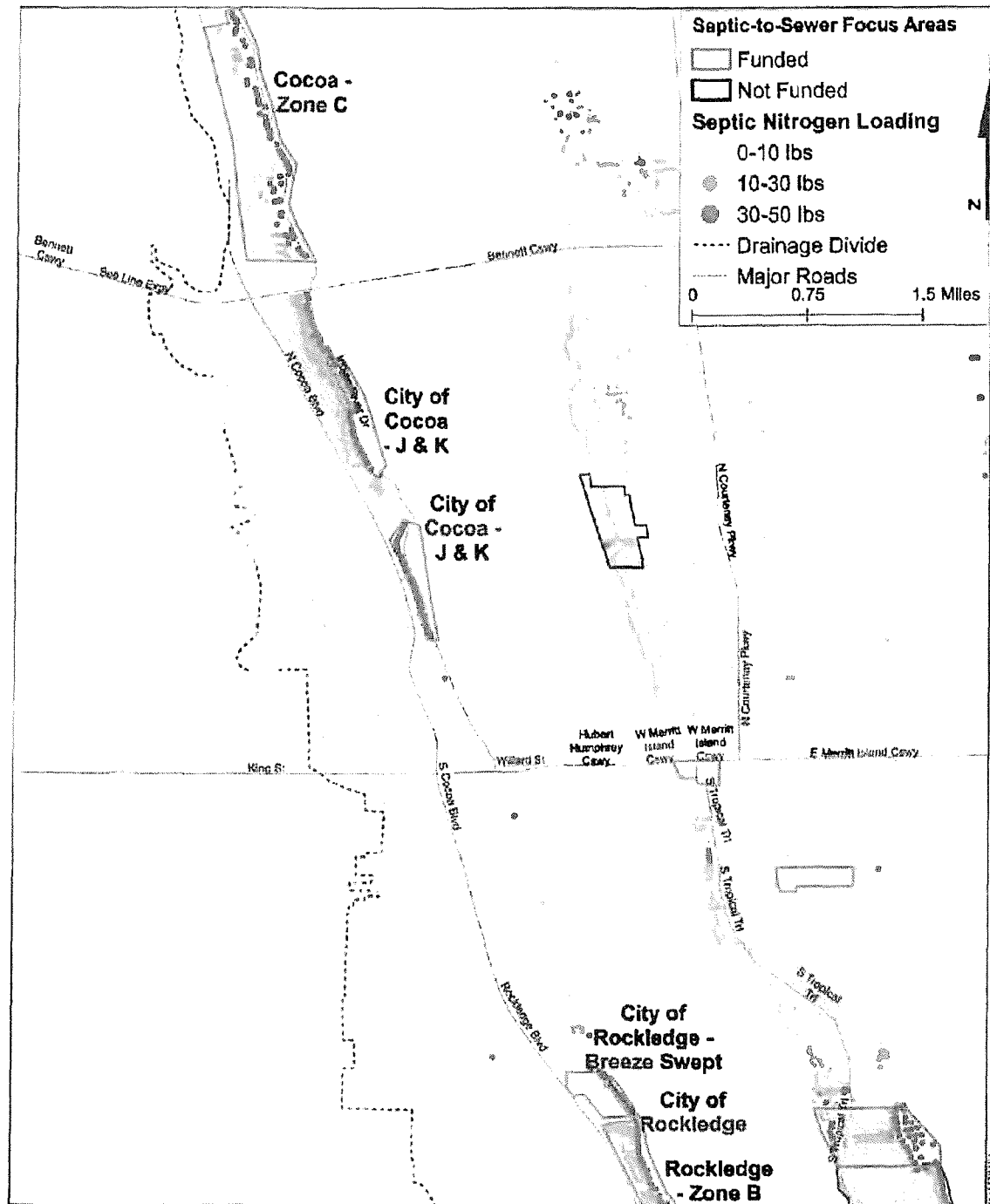
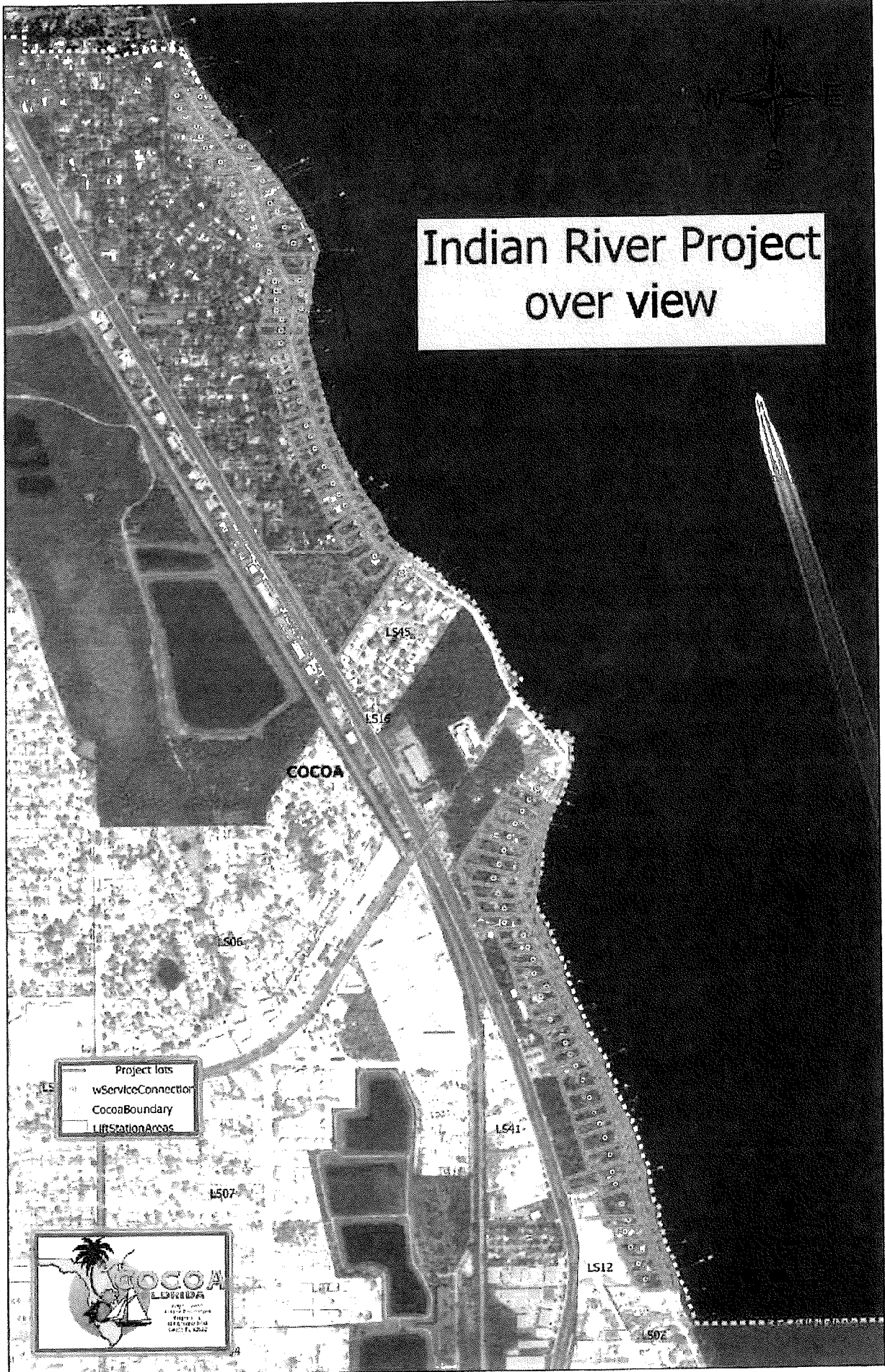


Figure 4-7: Septic System Removal Projects in North IRL, continued

Figure 4-7 Long Description

Indian River Project over view





Legislation Text

File #: 22-709, Version: 1

CITY COUNCIL AGENDA ITEM

Memo Date: November 18, 2022
Agenda Date: November 29, 2022
Prepared By: Jack Walsh, Utilities Director
Through: Stockton Whitten, City Manager
Requested Action:
To Provide Direction to Staff for Funding and New Policies, if Necessary, for the Indian River Drive Septic to Sewer Conversion

BACKGROUND:

This agenda item was previously reviewed by Council on August 9th, July 26th and June 24, 2022 meetings. Portions of the is agenda remain the same and portions have been modified or updated.

Two areas within the City of Cocoa along Indian River Drive have been identified for funding form the Save Our Indian River Lagoon (SOIRL) tax adopted by Brevard County. The areas are known as Area "J" and "K" and consist of a total of 92 ~~88~~ single family homes that can be eligible for reimbursement to remove their septic systems and replace with a city owned gravity sewer system.

The SOIRL study conducted by Tetra Tech identified 5 major areas of pollutants into the Indian River Lagoon;

1. Stormwater runoff
2. Baseflow/septic, leaking sewer, reclaimed water
3. Atmospheric deposition
4. Point sources
5. Muck flux

SOIRL currently has approved an allocation of approximately \$6.1M for 88 lots toward the design, construction of a new gravity sewer system to eliminate existing septic systems assuming 100% participation. The final design and plans are complete. The opinion of probable costs was prepared by the Engineer of Record and the costs vary based on the method of construction used by a contractor to install the sewer mains. Current cost estimates place the costs of construction of the new gravity system at \$6.6 to \$8.2M. This estimate does not include homeowner on site costs.

Cocoa engaged a consultant to prepare a preliminary feasibility study to identify more specifically how many homes could be served, if a gravity or pressure force main system would be required and to understand the geology, and the challenges of construction in this area. Upon completion of a preliminary layout for the sewer, a community meeting was held last year for citizens to ask questions

and see the proposed scope of work.

According to Brevard County Natural Resources Department, the project is eligible to fund 88 lots. Council directed the City Manager to petition the SOIRL Citizen Oversight Committee for additional funding. The Oversight Committee made a request to the Brevard County Commission to increase the allocation by \$913K for a total funding available of \$6,167,373. The request was approved on the October 25, 2022 Commission meeting. The cost for the project using SOIRL funding along with potential grants could potentially cover all costs based on current budgets assuming 100% participation of the 88 lot owners. However, cost over runs could range from \$691K to \$4.9M depending on the actual connections achieved. Note as the level of participation decreases, the costs to the city or citizens increase. For example, at 70% participation using the worst-case estimate, the city or citizens could be responsible for repaying an estimated \$2.3M of reimbursable costs back to Brevard County.

At the community meeting hosted by Staff and our consultant in November 2020, the project was presented as a potential no cost to the homeowners based on information known at the time. Per our current discussion with Brevard County, the costs for the design and construction of the sewer system are reimbursable and the onsite costs of the homeowner are not reimbursable under the SOIRL program but may be eligible under other grants offered by FDEP or SJRWMD. A survey was conducted in conjunction with the community meeting and of the 40 respondents, 22 homeowners or 55% were not supportive of the project if the homeowner was responsible for costs associated with connecting to the sewer system.

Currently, City of Cocoa Code of Ordinances does not require existing homeowners who have functioning septic systems to connect to city sewer system. The following items are presented to outline options available to Council to consider. The financial liabilities associated with this project will need to be addressed and the appropriate actions identified for follow up by staff. To address the requirements to connect or not connect and to address shortfall in funding that is not covered by either the SOIRL funding for infrastructure or a future grant from FDEP/SJRWMD for homeowner costs, the following options are available:

Option 1: Withdraw the sewer infrastructure project and let the homeowners submit and qualify for advanced septic treatment funding from SOIRL

If chosen, withdrawing the Septic to Sewer Conversion project will allow all homeowners within the current J and K areas to seek reimbursement for septic replacements if the new septic system meets all the advanced treatment requirements outlined in the SOIRL technical report. Brevard County Natural Resources Department will require a letter from the city to withdraw the project. Homeowners would be immediately eligible for to apply to Brevard County for individual septic system replacement dollars. Per the SOIRL website, the maximum reimbursement for advanced septic systems is \$18,000 per lot. This option allows the greatest freedom of choice for homeowners but not complete removal of unwanted nutrients to the lagoon.

Option 2: Mandatory Participation. Require all homeowners to connect to the sewer system once completed. Council must determine how cost overruns are funded If cost overruns (if they occur) for public infrastructure are greater than SOIRL funding and any applicable grants, the cost above the available funding will be paid for by:

**A) Utilities/Utility Rate Payers or
B) Homeowners**

Each homeowner can apply for FDEP or SJRWMD grants through the city as available for additional reimbursements for septic abandonment, new sewer service line, hardscape replacements and potentially impact fee if allowed by the grant.

With mandatory participation, the city can apply for a grant from SJRWMD or FDEP for the short fall from SOIRL. Adopting a specific mandatory connect policy for the homeowners in the affected areas as well as a policy for non-compliance with enforcement actions detailed is needed. The details on enforcement to address homeowners who refuse to comply will need to be identified. The policy must address the costs not covered due to refusal to participate and the costs above allocated funding regardless of the source of funding.

In the above option, the cost overrun funding source for public infrastructure will need to be specifically stipulated as either a city utility responsibility or a homeowner responsibility. Mandatory participation ensures maximum reimbursement from SOIRL funding but may be insufficient. Homeowners can seek grants for new service lines and other related costs. If homeowners are to pay for infrastructure overruns, the estimated costs spread over 88 lots may create a large liability to the homeowners and that liability will vary on a lot-by-lot basis depending on actual costs associated with connecting a lot because of the varying lot characteristics and complexities (e.g., lot size and depth; obstructions such as walls, fences, trees, and accessory structures; location and accessibility of existing septic tank; length of lateral pipe run, etc.) related to installing a new lateral service line and removing the existing septic tank for each particular lot. For example, based on a very preliminary field inspection of the 88 lots, the lots were placed into four, very general groupings to demonstrate the potential range of estimated costs to the homeowners from the lowest group estimate of \$24,420 (18 lots) to the highest group estimate of \$62,640 (4 lots) (see attached). However, actual homeowner costs could be higher or lower for any particular lot depending on the characteristics and complexities of the lot as mentioned above.

To move forward with this project, homeowners will have to connect to the City's sewer system. As such, the City Council will need to adopt an ordinance requiring a citywide mandatory connection policy addressing lots that have existing septic when city sewer systems are or become available. The areas identified as Area J and Area K from the Brevard County Tetra Tech Report will be required to connect without exception due to the very close proximity of the homes to the lagoon and the environmental harm such as algae blooms and nutrient loading caused by the septic systems per the Tetra Tech report. Other properties east of US 1 with existing working septic systems, which are not part of the Area J and Area K project and not currently eligible for the subject funding program currently under consideration in this agenda item, will likewise be required to connect at their own expense because of their proximity and potential environmental harm to the lagoon. The ordinance will also adopt enforcement procedures to enforce the mandatory sewer connection requirement and discontinuance of the homeowner's septic system. The additional costs and impact on funding eligibility on the City and homeowners associated with enforcement is unknown at this time and will depend on the number of homeowners that refuse abide by the mandatory connection policy and connect and participate in the project.

Homes outside Area J and K and outside the areas designated in the Tetra Tech report that are

located west of US 1 and have working septic systems and currently have access to the city sewer system can be granted exceptions to connect to the City's sewer system so long as their septic systems continue to function properly. Staff estimates there are approximately 124 parcels within the city limits that have current water accounts and have access to existing sewer but have no current sewer account. Exceptions approved for properties west of US1 would not force a customer to immediately connect to the City's sewer system, but such properties will be required to connect once their septic system fails in the future.

The Utilities Department will need to cash fund the project subject to review and upon securing mandatory participation, sign a contract with Brevard County to accept the funding reimbursement from SOIRL.

Option 3 was deleted due to its infeasibility.

Option 4: Delay Decision to move forward

The Council could choose to take no action at this time. The delay would continue to maintain allocations (\$6.1M) from SOIRL. The project would also prohibit any of the 88 homeowners from applying and receiving any advanced septic funding. The final engineering design plans can be held until the city is ready to act. It is difficult to predict what construction costs would be in the future considering the current volatility and high inflation spike being experienced by the City and whether the delay would increase or decrease future costs.

STRATEGIC PLAN CONNECTION:

N/A

BUDGETARY IMPACT:

Budgeted N/A
If not budgeted, is amendment/transfer attached? N/A

PREVIOUS ACTION:

On August 9th, 2022, Council reviewed an agenda item to consider multiple options for the Save Our Indian River Lagoon Septic to Sewer Project. The item was not approved and failed due to the lack of a majority for the motion.

On July 24th, 2022, Council reviewed an agenda item to consider multiple options for the Save Our Indian River Lagoon Septic to Sewer Project. More information on homeowner costs was requested outside the Indian River Drive corridor needed to be considered and the item was tabled until the August 9th, 2022 meeting.

On June 24th, 2022, Council reviewed an agenda item to consider multiple options for the Save Our Indian River Lagoon Septic to Sewer Project. More information on sewer impacts outside the Indian River Drive corridor needed to be considered and the item was tabled until the July 26th, 2022 meeting.

On November 13, 2019, Council approved a task order for Bussen-Mayer Engineering Group (AKA DRMP), for final engineering design and surveying.

On December 12, 2017 Council approved a task order for Bussen-Mayer Engineering Group for preliminary design, geotechnical analysis, survey and project feasibility.

RECOMMENDED MOTION:

To Provide Direction to Staff for Funding and New Policies, if Necessary, for the Indian River Drive Septic to Sewer Conversion

Areas J and K - Estimated Costs

11/29/2022

Septic to Sewer Project

Current SOIRL Funding - Infrastructure Reimbursement

# of								Current	Current	Needed
Connections	Assumed	Actual						Estimated	Estimated	Funding
Served by	Participation	Connections	Current	Grant	Grant Funding	Total Available	Engineering	Const. Cost	Customer	Required or
Project	Rate	made	Funding SOIRL	Funding Pvt.	Public	Funding	Costs	Max.	Cost	Surplus
88	100%	88	\$6,167,373	\$1,560,000	\$4,607,373	\$12,334,746	\$605,865	\$8,300,000	\$3,120,000	\$308,881
	90%	79	\$5,550,636	\$1,404,000	\$4,007,639	\$10,962,275	\$545,279	\$8,300,000	\$2,808,000	-\$691,004
	80%	70	\$4,933,899	\$1,248,000	\$3,562,346	\$9,744,245	\$484,692	\$8,300,000	\$2,496,000	-\$1,536,447
	70%	62	\$4,317,161	\$1,092,000	\$3,117,052	\$8,526,213	\$424,106	\$8,300,000	\$2,184,000	-\$2,381,892
	60%	53	\$3,700,424	\$936,000	\$2,671,759	\$7,308,183	\$363,519	\$8,300,000	\$1,872,000	-\$3,227,336
	50%	44	\$3,083,687	\$780,000	\$2,226,466	\$6,090,153	\$302,933	\$8,300,000	\$1,560,000	-\$4,072,780
	40%	35	\$2,466,950	\$624,000	\$1,781,173	\$4,872,123	\$242,346	\$8,300,000	\$1,248,000	-\$4,918,223

Note : SOIRL funding based on new \$70,083 per lot reimbursement (\$6,167,373 for 88 lots)

Customer Grant Funding based on \$35,454 per lot (\$3.12M for 88 lots assumed)

Septic to Sewer Project

11/29/2022

Estimated Home Owner Costs (service line, remove septic, repairs, landscaping)		
# of Connections Served by Project	Estimated Cost per Lot	Estimated Total Customer Cost
4	\$62,640	\$250,560
50	\$30,960	\$1,548,000
20	\$27,960	\$559,200
18	\$24,420	\$439,560
Subtotal		\$2,797,320
Impact Fees		\$161,000
Total		\$2,958,320



Range of Costs
to be paid for by homeowners
or by grant or in any combination



\$3,000,000

* Estimate based on field observation and GIS data and can vary

50/50 Funding	Expense Debit	Funding Credit		Expense Debit	Funding Credit
Public Infrastructure Cost Eng/Bidding/Inspection	High Cost Estimate		\$6,167,373	Low Cost Estimate	
	(\$8,300,000)			(\$6,700,000)	
	(\$605,865)			(\$605,865)	
SOIRL Funding match		\$4,607,373			\$4,607,373
Max Grant Funding		\$4,607,373			\$4,607,373
Private Costs	(\$3,000,000)			(\$3,000,000)	
Eng/Bidding/Inspection	(\$120,000)			(\$120,000)	
SOIRL Funding match		\$1,560,000			\$1,560,000
Max Grant Funding		\$1,560,000			\$1,560,000
<u>Totals</u>	<u>(\$12,025,865)</u>	<u>\$12,334,746</u>		<u>(\$10,425,865)</u>	<u>\$12,334,746</u>
Needed Funding/Surplus	\$308,881	*		\$1,908,881	*

* Note - surplus not possible with grants. The agencies will only reimburse based on actual expenses

24

Heyward, Katharine

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Friday, January 27, 2023 2:55 PM
To: Heyward, Katharine
Cc: Steversen, Kathryn; Anthony Garganese (OrlandoLaw)
Subject: RE: Request for Conflict of Interest Guidance
Attachments: Cocoa Beach Plumbing estimate of 2115 N IRD.pdf; Koss Lot Enlarged View.png

Dear Esq. Heyward,

Thank you for your patience with my inquiries about a conflict of interest on the Indian River Lagoon septic to sewer project vote. I've received an estimate for hooking up septic to sewer on the property my husband and I own. Is this sufficient to change you and Mr. Zuilkowski's opinion on my place in the class and therefore my right to vote? Is this enough evidence to bring before the full Ethics Commission for a formal ruling? Below is the Question Summary and attached is the estimate along with a map showing my property.

QUESTION SUMMARY

If Council votes to approve moving forward on the J & K Project, Councilwoman Koss and her husband own 1 of 88 homes located at 2115 N. Indian River Drive in Cocoa, Florida that would be eligible for and mandated to hook up to the sewer line once it is completed. As currently estimated, most of the costs of the sewer main line construction and lateral line hookups would be covered by the Save Our Indian River Lagoon funds already available and matching Florida Department of Environment Program Grants if approved. The costs estimated for the project are:

- \$9,000,000 Main Line Construction-Engineering Estimate by Consultant
- \$3,000,000 Lateral Line Hookups - (Visual Field Survey by Cocoa's Utility Department with no specific houses included in the estimate.)

An estimate on Councilwoman Koss' property has been obtained by one of the plumbers specifically approved by Brevard County Natural Resources to work on these septic to sewer projects. The costs to her property for hookup to the sewer line is \$8,097 plus up to an additional \$2,000 in Septic Abandonment not included in the quote (attached), for a total of \$10,097. Of the estimated \$3,000,000 cost for the lateral line hook up, Councilwoman Koss's estimate attributes .04% of the overall total. (\$10,097/\$3,000,000). Her share of the mainline sewer connection would be the same as the rest of the 88 homeowners. (88 homes/\$9,000,000 cost).

The degree to which there is uncertainty about the project lies in whether the project would be completed if final bids are much greater than expected or fewer grant dollars than are anticipated, (based upon awards to other municipalities), are awarded. If either occurs, it is expected, as has routinely occurred with this council, that a revote on the financial feasibility of the project would occur and a new vote taken as to whether to move forward with construction. Councilwoman Koss's special private gain or loss consideration would not change if this occurs.

For the Good of Cocoa, *Lorraine*



Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Sent: Monday, November 28, 2022 5:09 PM
To: Lorraine Koss <lkoss@cocoafl.gov>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: Request for Conflict of Interest Guidance

EXTERNAL MESSAGE - USE CAUTION WITH LINKS AND ATTACHMENTS!

Ms. Koss,

Please disregard the advice rendered to you on October 24, 2022, regarding voting on the septic to sewer project in light of the additional information we received from you on 11/23/22 and the conversation we had today (you, Mr. Garganese, Mr. Zuilkowski (General Counsel), and I), in which new guidance was given. If any new information comes along, please feel free to reach out to me.

Sincerely,

Kathy Heyward

Katharine B. Heyward

Attorney
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
(850) 488-3077 (Fax)
www.ethics.state.fl.us

Physical address:
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Wednesday, November 23, 2022 3:59 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>; zuilkowski.steven@leg.state.fl
Cc: Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: Request for Conflict of Interest Guidance

Dear Esq. Heyward,

At the suggestion of the City of Cocoa's attorney, I am providing additional detailed information related to my September 21, 2022 request for a written conflict of interest opinion because I intend to rely on the guidance being provided by your office. This matter is currently scheduled to be heard by the City Council on Tuesday, November 29, 2022. Due to time constraints regarding grant funding availability and immediate pending septic system decisions affecting some of the interested parties, this matter needs to be considered by the City Council soon.

Below is my executive summary of the facts and matter being considered by the City Council. However, I worked with the City Attorney to also prepare a more detailed and complete factual statement for your consideration which is attached to this email.

The Cocoa City Council will decide among three options for the J & K Septic to Sewer Project. The 3 options are: (1) Withdraw from the project and let homeowners submit and qualify for advanced septic treatment funding from SOIRL; (2) Require mandatory hook up of all homes identified in the project and allow the city to apply for SJRWMD and FDEP funding while also specifying whether individual homeowners or utilities/utilities rate payers would be responsible for any cost overruns related to the project; or (3) Delay a decision to move forward with the project.

I am the district 4 Councilperson who is one of five voting members on the council. I have previously recused myself on this vote. The project is a part of Brevard County's Natural Resource Department's *Save Our Indian River Lagoon 10-year plan* to stop the flow of pollutants to the Indian River Lagoon. Brevard County voters previously approved 1/2 cent sales tax to provide a funding source for the projects identified in the plan. If Option 1 were to pass and the project is withdrawn, I would be 1 of the 88 homeowners who would immediately be eligible to apply for an individual grant of up to \$18k to upgrade my septic system and would be required to pay tax on any benefit received. If Option 2 were to pass, I would be required to hook up to the sewer line being constructed as part of the project and potentially have all or part of my hook up and septic removal costs paid for by grants while being taxed on any benefit received. I was advised to recuse myself because of the special private gain test including the 1% size of class guidance issued by the Commission on Ethics. If only the 88 single family home owners constitute the class size, my interest would be approximately 1.13%.

Brevard County has identified this stretch of Indian River Drive as a contributor to the pollution levels in the Indian River Lagoon including the existing septic tanks in the subject J&K project area. Projects incorporated in the plan to remove excess nutrients (pollutants) provide a benefit the entire county. \$9 M of the \$12M septic to sewer project as currently estimated by the City will be for installation of the gravity sewer line which becomes a capital asset of the City. The balance of \$3M is estimated to be needed for lateral line installation and septic tank removal, normally paid by the homeowner. However, grant dollars are available for these lateral lines/septic tank removal and may cover the entire cost of the homeowners' hook-ups. Hook-up costs for each homeowner will vary on a lot-by-lot basis, but have been estimated by the City to cost as low as approximately \$24k to as high as approximately \$63K for 4 homeowners who are identified as being in the worst-case scenario. I do not believe my home is in the group considered a worst-case scenario.

On July 26, 2022, after citizen input and deliberation the vote by the City Council was split equally between options 1 (allow homeowners to apply for advanced septic) and 2 (proceed with the project and require mandatory hook-up) so both options died because a majority could not be reached. Had Option 2 passed, other City Council votes would be required to implement and complete the project.

Additional SOIRL grant dollars were just approved by Brevard County to cover an even greater amount of the J&K project costs so the item is now being presented to the Council again on November 29, 2022 with the same options described above.

I respectfully request that your office consider the more detailed and complete factual statement that was prepared with the assistance of the City Attorney, and provide an additional written opinion prior to the November 29, 2022 meeting so I may determine whether I can vote on this important matter.

Thank you, enjoy the holiday, and I hope to hear from you soon.

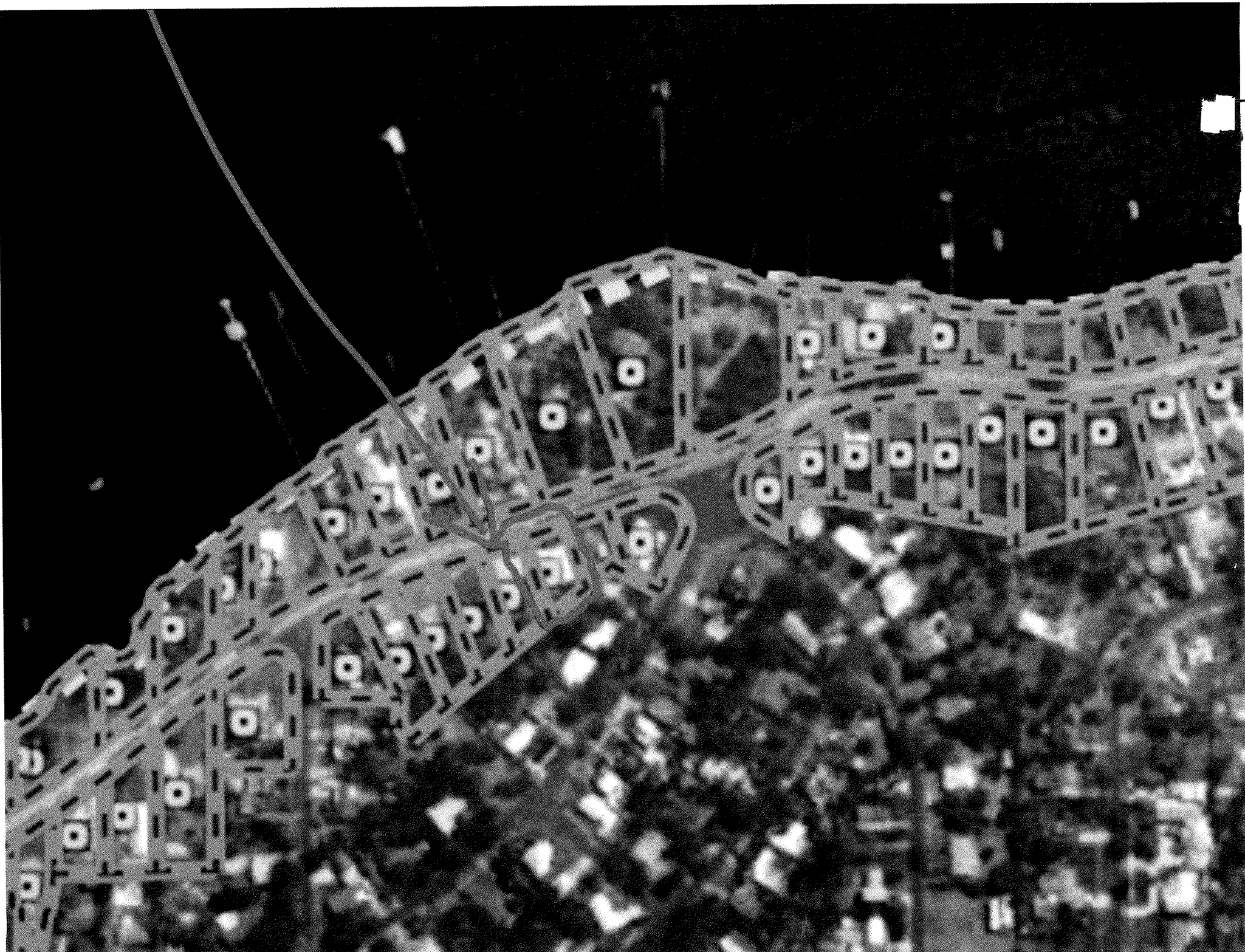
Lorraine Koss

Cocoa Councilperson District 4



PLEASE NOTE: Florida has a very broad public records law. Most written communications (including contents of emails and email addresses) to or from City of Cocoa officials and employees regarding public business are public records available to the public and media upon request. Your written and e-mail communications may be subject to public disclosure. If you do not want your written and email communications released in response to a public records request, do not send written or email communications to City of Cocoa officials and employees. Instead, contact this office by phone.

PLEASE NOTE: Florida has a very broad public records law. Most written communications (including contents of emails and email addresses) to or from City of Cocoa officials and employees regarding public business are public records available to the public and media upon request. Your written and e-mail communications may be subject to public disclosure. If you do not want your written and email communications released in response to a public records request, do not send written or email communications to City of Cocoa officials and employees. Instead, contact this office by phone.



Heyward, Katharine

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Monday, January 30, 2023 12:00 PM
To: Heyward, Katharine
Cc: Steverson, Kathryn; Anthony Garganese (OrlandoLaw)
Subject: RE: Request for Conflict of Interest Guidance
Attachments: Sewer Connection Costs.docx

Esq. Heyward,

Please see the attached additional information on costs for connecting from septic to sewer. I just received it this morning.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Lorraine Koss
Sent: Friday, January 27, 2023 2:55 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Dear Esq. Heyward,

Thank you for your patience with my inquiries about a conflict of interest on the Indian River Lagoon septic to sewer project vote. I've received an estimate for hooking up septic to sewer on the property my husband and I own. Is this sufficient to change you and Mr. Zuilkowski's opinion on my place in the class and therefore my right to vote? Is this enough evidence to bring before the full Ethics Commission for a formal ruling? Below is the Question Summary and attached is the estimate along with a map showing my property.

QUESTION SUMMARY

If Council votes to approve moving forward on the J & K Project, Councilwoman Koss and her husband own 1 of 88 homes located at 2115 N. Indian River Drive in Cocoa, Florida that would be eligible for and mandated to hook up to the sewer line once it is completed. As currently estimated, most of the costs of the sewer main line construction and lateral line hookups would be covered by the Save Our Indian River Lagoon funds already available and matching Florida Department of Environment Program Grants if approved. The costs estimated for the project are:

- \$9,000,000 Main Line Construction-Engineering Estimate by Consultant
- \$3,000,000 Lateral Line Hookups - (Visual Field Survey by Cocoa's Utility Department with no specific houses included in the estimate.)

An estimate on Councilwoman Koss' property has been obtained by one of the plumbers specifically approved by Brevard County Natural Resources to work on these septic to sewer projects. The costs to her property for hookup to the sewer line is \$8,097 plus up to an additional \$2,000 in Septic Abandonment not included in the quote (attached), for a total of \$10,097. Of the estimated \$3,000,000 cost for the lateral line hook up, Councilwoman Koss's estimate attributes .04% of the overall total. (\$10,097/\$3,000,000). Her share of the mainline sewer connection would be the same as the rest of the 88 homeowners. (88 homes/\$9,000,000 cost).

The degree to which there is uncertainty about the project lies in whether the project would be completed if final bids are much greater than expected or fewer grant dollars than are anticipated, (based upon awards to other municipalities), are awarded. If either occurs, it is expected, as has routinely occurred with this council, that a revote on the financial feasibility of the project would occur and a new vote taken as to whether to move forward with construction. Councilwoman Koss's special private gain or loss consideration would not change if this occurs.

For the Good of Cocoa, *Lorraine*



Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Sent: Monday, November 28, 2022 5:09 PM
To: Lorraine Koss <lkoss@cocoafl.gov>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: Request for Conflict of Interest Guidance

EXTERNAL MESSAGE - USE CAUTION WITH LINKS AND ATTACHMENTS!

Ms. Koss,

Please disregard the advice rendered to you on October 24, 2022, regarding voting on the septic to sewer project in light of the additional information we received from you on 11/23/22 and the conversation we had today (you, Mr. Garganese, Mr. Zuilkowski (General Counsel), and I), in which new guidance was given. If any new information comes along, please feel free to reach out to me.

Sincerely,

Kathy Heyward

Katharine B. Heyward
Attorney
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
(850) 488-3077 (Fax)

Physical address:
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Wednesday, November 23, 2022 3:59 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>; zuilkowski.steven@leg.state.fl.us
Cc: Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: Request for Conflict of Interest Guidance

Dear Esq. Heyward,

At the suggestion of the City of Cocoa's attorney, I am providing additional detailed information related to my September 21, 2022 request for a written conflict of interest opinion because I intend to rely on the guidance being provided by your office. This matter is currently scheduled to be heard by the City Council on Tuesday, November 29, 2022. Due to time constraints regarding grant funding availability and immediate pending septic system decisions affecting some of the interested parties, this matter needs to be considered by the City Council soon.

Below is my executive summary of the facts and matter being considered by the City Council. However, I worked with the City Attorney to also prepare a more detailed and complete factual statement for your consideration which is attached to this email.

The Cocoa City Council will decide among three options for the J & K Septic to Sewer Project. The 3 options are: (1) Withdraw from the project and let homeowners submit and qualify for advanced septic treatment funding from SOIRL; (2) Require mandatory hook up of all homes identified in the project and allow the city to apply for SJRWMD and FDEP funding while also specifying whether individual homeowners or utilities/utilities rate payers would be responsible for any cost overruns related to the project; or (3) Delay a decision to move forward with the project.

I am the district 4 Councilperson who is one of five voting members on the council. I have previously recused myself on this vote. The project is a part of Brevard County's Natural Resource Department's *Save Our Indian River Lagoon 10-year plan* to stop the flow of pollutants to the Indian River Lagoon. Brevard County voters previously approved 1/2 cent sales tax to provide a funding source for the projects identified in the plan. If Option 1 were to pass and the project is withdrawn, I would be 1 of the 88 homeowners who would immediately be eligible to apply for an individual grant of up to \$18k to upgrade my septic system and would be required to pay tax on any benefit received. If Option 2 were to pass, I would be required to hook up to the sewer line being constructed as part of the project and potentially have all or part of my hook up and septic removal costs paid for by grants while being taxed on any benefit received. I was advised to recuse myself because of the special private gain test including the 1% size of class guidance issued by the Commission on Ethics. If only the 88 single family home owners constitute the class size, my interest would be approximately 1.13%.

Brevard County has identified this stretch of Indian River Drive as a contributor to the pollution levels in the Indian River Lagoon including the existing septic tanks in the subject J&K project area. Projects incorporated in the plan to remove excess nutrients (pollutants) provide a benefit the entire county. \$9 M of the \$12M septic to sewer project as currently estimated by the City will be for installation of the gravity sewer line which becomes a capital asset of the City. The balance of \$3M is estimated to be needed for lateral line installation and septic tank removal, normally paid by the homeowner. However, grant dollars are available for these lateral lines/septic tank removal and may cover the entire cost of the homeowners' hook-ups. Hook-up costs for each homeowner will vary on a lot-by-lot basis, but have been estimated by the City to cost as low as approximately \$24k to as high as approximately \$63K for 4 homeowners who are identified as being in the worst-case scenario. I do not believe my home is in the group considered a worst-case scenario.

On July 26, 2022, after citizen input and deliberation the vote by the City Council was split equally between options 1 (allow homeowners to apply for advanced septic) and 2 (proceed with the project and require mandatory hook-up) so both options died because a majority could not be reached. Had Option 2 passed, other City Council votes would be required to implement and complete the project.

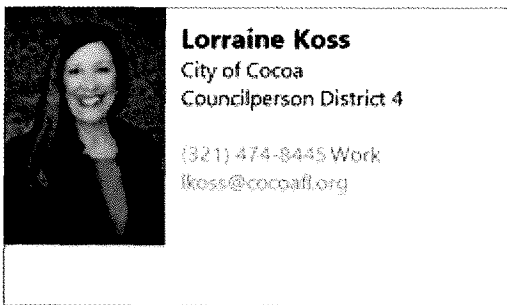
Additional SOIRL grant dollars were just approved by Brevard County to cover an even greater amount of the J&K project costs so the item is now being presented to the Council again on November 29, 2022 with the same options described above.

I respectfully request that your office consider the more detailed and complete factual statement that was prepared with the assistance of the City Attorney, and provide an additional written opinion prior to the November 29, 2022 meeting so I may determine whether I can vote on this important matter.

Thank you, enjoy the holiday, and I hope to hear from you soon.

Lorraine Koss

Cocoa Councilperson District 4



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SEPTIC TO SEWER CONNECTION COSTS

Sewer connection costs vary widely depending on a few factors. The main components of the cost are plumbing for sewer connection, septic abandonment, connection fees, and site restoration. The Brevard County Natural Resources Department has gathered the following information based on connections they have helped fund.

- Sewer Connection: Costs vary widely depending on the plumber, distance of piping, and number of obstacles in the way.
 - For gravity sewer: Expect \$3,000-\$5,000 for a typical single-family home with an existing sewer tap ready for connection.
 - For force main sewer: A grinder pump is needed to connect to this type of sewer system. These vary in cost depending on the manufacturer but expect \$1,000-\$4,000. An electrician may be needed to run power to the pump.
 - Connections requiring a new sewer tap under a road may cost \$15,000--\$50,000. Where there is Right of Way or the property owner provides an easement, the County designs and constructs stub outs so that homeowners do not have to tap in under pavement.
- Septic Abandonment: Costs are typically around \$1,500 to abandon the tank. Costs can be higher if the tank is hard to reach or covered by a shed or driveway.

Connection Fees:

- Brevard County: 1-3 bedrooms - \$2,257, 4 bedroom - \$2,610, and 5+ bedrooms - \$2,962.
 - Palm Bay: 5,770.40; <https://www.palmbayflorida.org/government/city-departments-a-to-e/customer-service/start-stop-service/service-availability>
 - Melbourne: ~\$2,310; <https://www.melbourneflorida.org/departments/financial-services/utility-billing/rate-table>
 - Titusville:
~\$2,190+; https://library.municode.com/fl/titusville/codes/land_development_regulations?nodeId=TILADERE_CH34PR_ARTIXFE_DIV3WASEIMFE
 - Cocoa: ~\$1,450+; <https://www.cocoafl.org/1547/Schedule-B-Miscellaneous-Rates-Fees-Char>
- Site Restoration: Costs depend on landscaping and other site conditions. For work in a lawn, restoration of sod and irrigation is \$1,000-\$2,000 for a typical single-family home lot.

Although expanding sewer service to previously unserved areas is a major investment in new infrastructure, once the new service lines and lift stations are constructed in the neighborhood, the average hook-up cost per home (sum of costs itemized above) is typically \$7500-20,000 per home. In the South-Central C project that is under construction now, the average hookup cost is less than \$9000 per home and that amount is entirely covered by grants. Staff continue to seek grants to cover the hook-up costs of typical homes. We have also competitive bid hook-up services and pre-approve plumbers. Homeowners can use a plumber of their choice and file for reimbursement or they can choose one of the County's pre-approved plumbers who can be paid directly by the County, so the owner does not have to front any expense.

Heyward, Katharine

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Monday, January 30, 2023 12:38 PM
To: Heyward, Katharine
Cc: Steverson, Kathryn; Anthony Garganese (OrlandoLaw)
Subject: RE: Request for Conflict of Interest Guidance
Attachments: Cocoa Beach Plumbing estimate of 2100 N IRD.pdf

Esq. Heyward,

Again, thanks for your patience. I apologize for the piecemeal email documents, but you may also be interested in a second quote on another neighbors home as a comparison. She is on the East side of Indian River Drive where the topography will require a waste pump to meet the gravity line. There are at least 15 homes in this situation.

As I explained on the phone, both quotes were obtained by Linda Dolphin to keep my name (and, any bias) from the bidder. Cocoa Beach Plumbing is one of Brevard County Natural Resource Department's approved plumbing companies for the Save Our Indian River Lagoon septic to sewer projects.

If needed, we can seek other estimates as well.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

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Sent: Monday, January 30, 2023 12:00 PM
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Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Esq. Heyward,

Please see the attached additional information on costs for connecting from septic to sewer. I just received it this morning.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Lorraine Koss
Sent: Friday, January 27, 2023 2:55 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw)

<agarganese@orlandolaw.net>

Subject: RE: Request for Conflict of Interest Guidance

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Lorraine Koss

City of Cocoa
Councilperson District 4

(321) 474-8445 Work
lkoss@cocoafl.org

Lorraine Koss
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65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>

Sent: Monday, November 28, 2022 5:09 PM

To: Lorraine Koss <lkoss@cocoafl.gov>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
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Sincerely,

Kathy Heyward

Katharine B. Heyward

Attorney

Florida Commission on Ethics

P.O. Drawer 15709

Tallahassee, FL 32317-5709

(850) 488-7864

(850) 488-3077 (Fax)

www.ethics.state.fl.us

Physical address:

325 John Knox Road

Building E, Suite 200

Tallahassee, FL 32303

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Wednesday, November 23, 2022 3:59 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>; zuilkowski.steven@leg.state.fl.us
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Thank you, enjoy the holiday, and I hope to hear from you soon.

Lorraine Koss

Cocoa Councilperson District 4



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*License #CFC1429665
63 N Orlando Avenue, Cocoa Beach, FL 32931
#321-783-6000
cbplumbingservice@gmail.com*

Proposal

Linda Dolphin
2100 N Indian River Drive
Cocoa FI
954-270-1979
ldolphin@dolphinins.com

Obtain Permit

New Septic to Sewer Main

- Trench soil and expose 4 inch septic sewer main exiting home on south side of property
- Provide and install 40 gallon electric waste pump
- Route new 4 " PVC to pump
- Provide and install check valve, two way ball valve and pump vent
- Trench soil on the south side heading west, run and bury pipe in ground. Upon reaching the wood line, run exposed pipe up steep incline through heavy vegetation.
- Tie into city lateral (CITY LATERAL NOT INSTALLED AS of ESTIMATE CREATION)
- Sleeve new PVC exiting home with larger PVC where needed
- Transition to 4" PVC outside home
- Provide and install 1 one way cleanout where plumbing exits home , pre pump, heading back toward home
- Provide and install 1 two way cleanout post pump near lateral connection point
- Provide and install approx 180 feet of scheduled 80 2' pressure pipe

NOTE: This estimate was created without knowing the exact information on lateral location or any other pertinent information concerning the proposed city sewer system installation. All information given on this proposal is subject to change due to lack of documented engineering information.

Final

- Test all functions to ensure proper operation
- Backfill soil
- Replace any concrete removed by CB Plumbing
- Replace any flat block removed by CB Plumbing

Total cost with material: \$13,870.00

First Draw (Materials): ½ Second Draw (Final) 1/2

THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ BEFORE SIGNING

***Per agreement, CB Plumbing is not responsible for termite or pest control treatment for concrete penetrations. The customer must create a bond between themselves and a pest control company so that there is no conflict of interest if future pest problems arise.** CB Plumbing is not responsible for sod/grass seed replacement. We will move sections of sod/grass for new plumbing and put it back in place when the project is complete, to the best of our ability. CB Plumbing is not responsible for drywall/tile/paint/texture/pavers repair or replacement in areas worked. It is the customers responsibility to replace/patch/sand/paint drywall that has been disturbed. Existing damage, corrosion, or necessary forced removal of plumbing fixtures for new PVC do not make CB Plumbing responsible for replacement of said fixtures. CB Plumbing uses high strength concrete, which has a rough finish. CB Plumbing will pour concrete in any areas we remove it, to level height desired by the customer. It is the customer's responsibility to use floor leveler or any other smooth finishes when the project is complete, if desired.*

Change orders: Please note that unforeseen work may be needed in order to complete your job to full satisfaction. In the event this takes place, a Change Order will be submitted and pricing will be adjusted accordingly. Change order fees are *in addition* to the already contracted work. This includes owner provided fixtures and additional options you as the customer may add or change as the job progresses.

Credit Card Transaction Fee: Please note that a transaction fee of 3.5% of the *total contracted price*, which includes change orders, will be applied.

Any alteration or deviation from above specifications involving extra costs will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Owner is to carry fire, tornado and other necessary insurance upon above work. Workman's compensation and public liability insurance on above work to be the responsibility of: **Cocoa Beach Plumbing Services.**

Acceptance of Proposal

Entire Agreement of the Parties: This Agreement constitutes and contains the entire

understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter hereof.

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. This proposal may be withdrawn by us if not accepted within 30 days.

Final Payments Due upon receipt

All payments are by check, cash, or cashier's check. Any other payment forms must be approved in advance or additional fees may apply.

In the event the undersigned customer fails to pay any amounts due under this agreement, then the undersigned customer shall pay any and all of Cocoa Beach Plumbing Service's collections costs, including, but not limited to, legal fees, court costs, etc.

Venue concerning any legal action involving this agreement shall be in Brevard County, Florida.

According to Florida's construction lien law (sections 713.001-713.37 Florida statutes), those who work on your property or provide materials and are not paid in full have a right to enforce their claim for payment against your property. This claim is known as a construction lien. If your contractor or a subcontractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full. If you fail to pay your contractor, your contractor may also have a lien on your property. This means if a lien is filed your property could be sold against your will to pay for labor, materials, or other services that your contractor or a subcontractor may have failed to pay. Florida's construction lien law is complex and it is recommended that whenever a specific problem arises, you consult an attorney.

Date _____ Signature _____

Heyward, Katharine

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Thursday, February 2, 2023 5:54 PM
To: Heyward, Katharine
Cc: Anthony Garganese (OrlandoLaw)
Subject: RE: Request for Conflict of Interest Guidance
Attachments: Homeowner cost estimate 8.4.2022.pdf; Cocoa Beach Plumbing estimate of 2115 N IRD.pdf

Esq. Heyward,

Attached is the estimate for my home, 2115 N. Indian River Drive. Also, you asked about the tier estimates for lateral lines to connect to sewer. I've attached the detailed breakdown based on "general observations from the field". These were part of the presentation by the Utility Director at the August 9, 2022 City Council meeting. They are also contained (without detail) on the last page of the Statement of Fact package we previously sent you.

We will look forward to your call tomorrow at 10 a.m.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Sent: Thursday, February 2, 2023 4:28 PM
To: Lorraine Koss <lkoss@cocoafl.gov>
Subject: FW: Request for Conflict of Interest Guidance

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65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Lorraine Koss
Sent: Friday, January 27, 2023 2:55 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Dear Esq. Heyward,

Thank you for your patience with my inquiries about a conflict of interest on the Indian River Lagoon septic to sewer project vote. I've received an estimate for hooking up septic to sewer on the property my husband and I own. Is this sufficient to change you and Mr. Zuilkowski's opinion on my place in the class and therefore my right to vote? Is this enough evidence to bring before the full Ethics Commission for a formal ruling? Below is the Question Summary and attached is the estimate along with a map showing my property.

QUESTION SUMMARY

If Council votes to approve moving forward on the J & K Project, Councilwoman Koss and her husband own 1 of 88 homes located at 2115 N. Indian River Drive in Cocoa, Florida that would be eligible for and mandated to hook up to the sewer line once it is completed. As currently estimated, most of the costs of the sewer main line construction and lateral line hookups would be covered by the Save Our Indian River Lagoon funds already available and matching Florida Department of Environment Program Grants if approved. The costs estimated for the project are:

- \$9,000,000 Main Line Construction-Engineering Estimate by Consultant

- \$3,000,000 Lateral Line Hookups - (Visual Field Survey by Cocoa's Utility Department with no specific houses included in the estimate.)

An estimate on Councilwoman Koss' property has been obtained by one of the plumbers specifically approved by Brevard County Natural Resources to work on these septic to sewer projects. The costs to her property for hookup to the sewer line is \$8,097 plus up to an additional \$2,000 in Septic Abandonment not included in the quote (attached), for a total of \$10,097. Of the estimated \$3,000,000 cost for the lateral line hook up, Councilwoman Koss's estimate attributes .04% of the overall total. (\$10,097/\$3,000,000). Her share of the mainline sewer connection would be the same as the rest of the 88 homeowners. (88 homes/\$9,000,000 cost).

The degree to which there is uncertainty about the project lies in whether the project would be completed if final bids are much greater than expected or fewer grant dollars than are anticipated, (based upon awards to other municipalities), are awarded. If either occurs, it is expected, as has routinely occurred with this council, that a revote on the financial feasibility of the project would occur and a new vote taken as to whether to move forward with construction. Councilwoman Koss's special private gain or loss consideration would not change if this occurs.

For the Good of Cocoa, *Lorraine*



Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Sent: Monday, November 28, 2022 5:09 PM
To: Lorraine Koss <lkoss@cocoafll.org>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: Request for Conflict of Interest Guidance

EXTERNAL MESSAGE - USE CAUTION WITH LINKS AND ATTACHMENTS!

Ms. Koss,

Please disregard the advice rendered to you on October 24, 2022, regarding voting on the septic to sewer project in light of the additional information we received from you on 11/23/22 and the conversation we had today (you, Mr. Garganese, Mr. Zuilkowski (General Counsel), and I), in which new guidance was given. If any new information comes along, please feel free to reach out to me.

Sincerely,

Kathy Heyward

Katharine B. Heyward

Attorney

Florida Commission on Ethics

P.O. Drawer 15709

Tallahassee, FL 32317-5709

(850) 488-7864

(850) 488-3077 (Fax)

www.ethics.state.fl.us

Physical address:

325 John Knox Road

Building E, Suite 200

Tallahassee, FL 32303

From: Lorraine Koss <lkoss@cocoafl.gov>

Sent: Wednesday, November 23, 2022 3:59 PM

To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>; zuilkowski.steven@leg.state.fl.us

Cc: Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>

Subject: Request for Conflict of Interest Guidance

Dear Esq. Heyward,

At the suggestion of the City of Cocoa's attorney, I am providing additional detailed information related to my September 21, 2022 request for a written conflict of interest opinion because I intend to rely on the guidance being provided by your office. This matter is currently scheduled to be heard by the City Council on Tuesday, November 29, 2022. Due to time constraints regarding grant funding availability and immediate pending septic system decisions affecting some of the interested parties, this matter needs to be considered by the City Council soon.

Below is my executive summary of the facts and matter being considered by the City Council. However, I worked with the City Attorney to also prepare a more detailed and complete factual statement for your consideration which is attached to this email.

The Cocoa City Council will decide among three options for the J & K Septic to Sewer Project. The 3 options are: (1) Withdraw from the project and let homeowners submit and qualify for advanced septic treatment funding from SOIRL; (2) Require mandatory hook up of all homes identified in the project and allow the city to apply for SJRWMD and FDEP funding while also specifying whether individual homeowners or utilities/utilities rate payers would be responsible for any cost overruns related to the project; or (3) Delay a decision to move forward with the project.

I am the district 4 Councilperson who is one of five voting members on the council. I have previously recused myself on this vote. The project is a part of Brevard County's Natural Resource Department's *Save Our Indian River Lagoon 10-year plan* to stop the flow of pollutants to the Indian River Lagoon. Brevard County voters previously approved 1/2 cent sales tax to provide a funding source for the projects identified in the plan. If Option 1 were to pass and the project is withdrawn, I would be 1 of the 88 homeowners who would immediately be eligible to apply for an individual grant of up to \$18k to upgrade my septic system and

would be required to pay tax on any benefit received. If Option 2 were to pass, I would be required to hook up to the sewer line being constructed as part of the project and potentially have all or part of my hook up and septic removal costs paid for by grants while being taxed on any benefit received. I was advised to recuse myself because of the special private gain test including the 1% size of class guidance issued by the Commission on Ethics. If only the 88 single family home owners constitute the class size, my interest would be approximately 1.13%.

Brevard County has identified this stretch of Indian River Drive as a contributor to the pollution levels in the Indian River Lagoon including the existing septic tanks in the subject J&K project area. Projects incorporated in the plan to remove excess nutrients (pollutants) provide a benefit the entire county. \$9 M of the \$12M septic to sewer project as currently estimated by the City will be for installation of the gravity sewer line which becomes a capital asset of the City. The balance of \$3M is estimated to be needed for lateral line installation and septic tank removal, normally paid by the homeowner. However, grant dollars are available for these lateral lines/septic tank removal and may cover the entire cost of the homeowners' hook-ups. Hook-up costs for each homeowner will vary on a lot-by-lot basis, but have been estimated by the City to cost as low as approximately \$24k to as high as approximately \$63K for 4 homeowners who are identified as being in the worst-case scenario. I do not believe my home is in the group considered a worst-case scenario.

On July 26, 2022, after citizen input and deliberation the vote by the City Council was split equally between options 1 (allow homeowners to apply for advanced septic) and 2 (proceed with the project and require mandatory hook-up) so both options died because a majority could not be reached. Had Option 2 passed, other City Council votes would be required to implement and complete the project.

Additional SOIRL grant dollars were just approved by Brevard County to cover an even greater amount of the J&K project costs so the item is now being presented to the Council again on November 29, 2022 with the same options described above.

I respectfully request that your office consider the more detailed and complete factual statement that was prepared with the assistance of the City Attorney, and provide an additional written opinion prior to the November 29, 2022 meeting so I may determine whether I can vote on this important matter.

Thank you, enjoy the holiday, and I hope to hear from you soon.

Lorraine Koss

Cocoa Councilperson District 4



Lorraine Koss

City of Cocoa
Councilperson District 4

(321) 474-8445 Work
lkoss@cocoafl.org

PLEASE NOTE: Florida has a very broad public records law. Most written communications (including contents of emails and email addresses) to or from City of Cocoa officials and employees regarding public business are public records available to the public and media upon request. Your written and e-mail communications may be subject to public disclosure. If you do not want your written and email communications released in response to a public records request, do not send written or email communications to City of Cocoa officials and employees. Instead, contact this office by phone.

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**Save Our Indian River Lagoon
Estimated Private Homeowner Costs**

8/4/2022

Typical Lot Depth	190			
Typical Setback	80			
	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" service line (in back)	l.f.	150	50	7500
septic tank abandon	L.S.	1	2500	2500
roadbase/fill	L.S.	1	3000	3000
				0
hardscape miscellaneous	s.y.	100	20	2000
driveways	c.y.	5	120	600
concrete decks/sidewalk	c.y.	10	120	1200
shrubs/trees	L.S.	1	4000	4000
sod	s.y.	100	5	500
irrigation repairs	L.S.	1	2000	2000
bore service line	l.f.	0	0	0
				\$23,300
		Contingency		20%
				\$27,960

Typical Lot Depth	300			
Typical Setback	125			
	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" service line (in back)	l.f.	200	50	10000
septic tank abandon	L.S.	1	2500	2500
roadbase/fill	L.S.	1	3000	3000
				0
hardscape miscellaneous	s.y.	100	20	2000
driveways	c.y.	5	120	600
concrete decks/sidewalk	c.y.	10	120	1200
shrubs/trees	L.S.	1	4000	4000
sod	s.y.	100	5	500
irrigation repairs	L.S.	1	2000	2000
bore service line	l.f.	0	0	0
				\$25,800
		Contingency		20%
				\$30,960

Best Case

Typcial Lot Depth

180

Typical Setback

50

	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" service line (in front) l.f.		50	50	2500
septic tank abandon L.S.		1	2500	2500
roadbase/fill L.S.		1	3000	3000
				0
hardscape miscellaneous s.y.		100	20	2000
driveways c.y.		5	120	600
concrete decks/sidewalk c.y.		10	120	1200
shrubs/trees L.S.		0.5	4000	2000
sod s.y.		100	5	500
irrigation repairs L.S.		0.5	2000	1000
bore service line l.f.		0	0	0
				\$15,300
			Contingency	20%
				\$18,360

Worst Case

Typcial Lot Depth

240

Typical Setback

80

	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" PVC service line l.f.		275	\$50	\$13,750
septic tank abandon L.S.		2	\$2,500	\$5,000
roadbase/fill L.S.		2	\$6,000	\$12,000
				\$0
hardscape miscellaneous s.y.		100	\$20	\$2,000
driveways c.y.		10	\$120	\$1,200
concrete decks/sidewalk c.y.		0	\$120	\$0
shrubs/trees L.S.		0	\$4,000	\$0
sod s.y.		50	\$5	\$250
irrigation repairs L.S.		1	\$2,000	\$2,000
bore service line l.f.		200	\$80	\$16,000
				\$52,200
			Contingency	20%
				\$62,640

House lower than Road Case

Typical Lot Depth

100

Typical Setback

25

	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" PVC service line	l.f.	50	\$50	\$2,500
septic tank abandon	L.S.	1	\$2,500	\$2,500
roadbase/fill	L.S.	1	\$6,000	\$6,000
				\$0
hardscape miscellaneous	s.y.	50	\$20	\$1,000
driveways	c.y.	10	\$120	\$1,200
concrete decks/sidewalk	c.y.	0	\$120	\$0
shrubs/trees	L.S.	0	\$4,000	\$0
sod	s.y.	30	\$5	\$150
irrigation repairs	L.S.	0.5	\$2,000	\$1,000
bore service line	l.f.	0	\$80	\$0
private pump and tank	l.s.	1	\$6,000	\$6,000
				\$20,350
			Contingency	20%
				\$24,420

<u>Unit Cost</u>	<u>Lots</u>	<u>Cost</u>
\$62,640	4	\$250,560
\$30,960	50	\$1,548,000
\$27,960	20	\$559,200
\$24,420	18	\$439,560
	92	
TOTAL ESTIMATE		\$2,797,320
Impact Fees		\$161,000
		\$2,958,320



License #CFC1429665
63 N Orlando Avenue, Cocoa Beach, FL 32931
#321-783-6000
cbplumbingservice@gmail.com

Proposal

Linda Dolphin
2115 North Indian River Drive,
Cocoa, FL,
954-270-1979
ldolphin@dolphinins.com

lateral install for new septic- county projec

Obtain permit

New Sewer Main

- Trench soil from home exiting septic drain towards city sewer tap
- Route 4" PVC to sewer tap and connect
- Install 2 way cleanout on each side of new system

Final

- Test all functions to ensure proper operation
- Backfill soil

NOTE: This estimate reflects the added difficulty in attempting to save the brick retaining wall. CBP will do our best to keep your brick wall intact, Should that not be the case, CB Plumbing Services will not assume or be held liable for any financial or legal liability should the wall need repaired or replaced due to the prescribed plumbing work in this proposal. CB Plumbing Services will have to remove some shrubs and possibly some trees, we will discuss this with the customer before removal, CB Plumbing Services shall not assume any financial or legal liability for removing designated shrubs and trees.

Piping will run down the North side of home staying on the high side of the garden/ mound.

NOTE: This estimate was created without knowing the exact information on lateral location or any other pertinent information concerning the proposed city sewer system installation. All information given on this proposal is subject to change due to lack of documented engineering information.

Total cost with material: \$ 8,900.00

First Draw : ½ Due start date - Second Draw (Final) ½ Due upon completion of contract

THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ BEFORE SIGNING

Per agreement, CB Plumbing is not responsible for termite or pest control treatment for concrete penetrations. The customer must create a bond between themselves and a pest control company so that there is no conflict of interest if future pest problems arise. CB Plumbing is not responsible for sod/grass seed replacement. We will move sections of sod/grass for new plumbing and put it back in place when the project is complete, to the best of our ability. CB Plumbing is not responsible for drywall/tile/paint/texture/pavers repair or replacement in areas worked. It is the customers responsibility to replace/patch/sand/paint drywall that has been disturbed. Existing damage, corrosion, or necessary forced removal of plumbing fixtures for new PVC do not make CB Plumbing responsible for replacement of said fixtures. CB Plumbing uses high strength concrete, which has a rough finish. CB Plumbing will pour concrete in any areas we remove it, to level height desired by the customer. It is the customer's responsibility to use floor leveler or any other smooth finishes when the project is complete, if desired.

Change orders: Please note that unforeseen work may be needed in order to complete your job to full satisfaction. In the event this takes place, a Change Order will be submitted and pricing will be adjusted accordingly. Change order fees are *in addition* to the already contracted work. This includes owner provided fixtures and additional options you as the customer may add or change as the job progresses.

Credit Card Transaction Fee: Please note that a transaction fee of 3.5% of the *total contracted price, which includes change orders*, will be applied.

Any alteration or deviation from above specifications involving extra costs will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Owner is to carry fire, tornado and other necessary insurance upon above work. Workman's compensation and public liability insurance on above work to be the responsibility of:

Cocoa Beach Plumbing Services.

Acceptance of Proposal

Entire Agreement of the Parties: This Agreement constitutes and contains the entire understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter hereof.

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. This proposal may be withdrawn by us if not accepted within 30 days.

Final Payments Due upon receipt

All payments are by check, cash, or cashier's check. Any other payment forms must be approved in advance or additional fees may apply.

In the event the undersigned customer fails to pay any amounts due under this agreement, then the undersigned customer shall pay any and all of Cocoa Beach Plumbing Service's collections costs, including, but not limited to, legal fees, court costs, etc.

Venue concerning any legal action involving this agreement shall be in Brevard County, Florida.

According to Florida's construction lien law (sections 713.001-713.37 Florida statutes), those who work on your property or provide materials and are not paid in full have a right to enforce their claim for payment against your property. This claim is known as a construction lien. If your contractor or a subcontractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full. If you fail to pay your contractor, your contractor may also have a lien on your property. This means if a lien is filed your property could be sold against your will to pay for labor, materials, or other services that your contractor or a subcontractor may have failed to pay. Florida's construction lien law is complex and it is recommended that whenever a specific problem arises, you consult an attorney.

Date _____ Signature _____

Heyward, Katharine

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Monday, February 6, 2023 9:19 AM
To: Heyward, Katharine
Cc: Anthony Garganese (OrlandoLaw); Steverson, Kathryn
Subject: FW: Request for Conflict of Interest Guidance
Attachments: Homeowner cost estimate 8.4.2022.pdf; Utilities Director's Hook Up Costs in Chart Format.docx

Esq. Heyward,

To help think about comparisons within the class impacted by the J & K project, this morning I put together the attached table. It is based on the Utility Director's field observation estimates that were presented to Council on 8/9/2022, also attached here and previously sent to you.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Lorraine Koss
Sent: Thursday, February 2, 2023 5:54 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Esq. Heyward,

Attached is the estimate for my home, 2115 N. Indian River Drive. Also, you asked about the tier estimates for lateral lines to connect to sewer. I've attached the detailed breakdown based on "general observations from the field". These were part of the presentation by the Utility Director at the August 9, 2022 City Council meeting. They are also contained (without detail) on the last page of the Statement of Fact package we previously sent you.

We will look forward to your call tomorrow at 10 a.m.

Lorraine Koss
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65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Sent: Thursday, February 2, 2023 4:28 PM
To: Lorraine Koss <lkoss@cocoafl.gov>
Subject: FW: Request for Conflict of Interest Guidance

EXTERNAL MESSAGE - USE CAUTION WITH LINKS AND ATTACHMENTS!

Ms. Koss,

This is the estimate that I got, which I'm thinking is your neighbor's.

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Monday, January 30, 2023 12:38 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Esq. Heyward,

Again, thanks for your patience. I apologize for the piecemeal email documents, but you may also be interested in a second quote on another neighbors home as a comparison. She is on the East side of Indian River Drive where the topography will require a waste pump to meet the gravity line. There are at least 15 homes in this situation.

As I explained on the phone, both quotes were obtained by Linda Dolphin to keep my name (and, any bias) from the bidder. Cocoa Beach Plumbing is one of Brevard County Natural Resource Department's approved plumbing companies for the Save Our Indian River Lagoon septic to sewer projects.

If needed, we can seek other estimates as well.

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Esq. Heyward,

Please see the attached additional information on costs for connecting from septic to sewer. I just received it this morning.

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Sincerely,

Kathy Heyward

Katharine B. Heyward

Attorney

Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
(850) 488-3077 (Fax)
www.ethics.state.fl.us

Physical address:

325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

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The Cocoa City Council will decide among three options for the J & K Septic to Sewer Project. The 3 options are: (1) Withdraw from the project and let homeowners submit and qualify for advanced septic treatment funding from SOIRL; (2) Require mandatory hook up of all homes identified in the project and allow the city to apply for SJRWMD and FDEP funding while also specifying whether individual homeowners or utilities/utilities rate payers would be responsible for any cost overruns related to the project; or (3) Delay a decision to move forward with the project.

I am the district 4 Councilperson who is one of five voting members on the council. I have previously recused myself on this vote. The project is a part of Brevard County's Natural Resource Department's *Save Our Indian River Lagoon 10-year plan* to stop the flow of pollutants to the Indian River Lagoon. Brevard County voters previously approved 1/2 cent sales tax to provide a funding source for the projects identified in the plan. If Option 1 were to pass and the project is withdrawn, I would be 1 of the 88 homeowners who would immediately be eligible to apply for an individual grant of up to \$18k to upgrade my septic system and would be required to pay tax on any benefit received. If Option 2 were to pass, I would be required to hook up to the sewer line being constructed as part of the project and potentially have all or part of my hook up and septic removal costs paid for by grants while being taxed on any benefit received. I was advised to recuse myself because of the special private gain test including the 1% size of class guidance issued by the Commission on Ethics. If only the 88 single family home owners constitute the class size, my interest would be approximately 1.13%.

Brevard County has identified this stretch of Indian River Drive as a contributor to the pollution levels in the Indian River Lagoon including the existing septic tanks in the subject J&K project area. Projects incorporated in the plan to remove excess nutrients (pollutants) provide a benefit the entire county. \$9 M of the \$12M septic to sewer project as currently estimated by the City will be for installation of the gravity sewer line which becomes a capital asset of the City. The balance of \$3M is estimated to be needed for lateral line installation and septic tank removal, normally paid by the homeowner. However, grant dollars are available for these lateral lines/septic tank removal and may cover the entire cost of the homeowners' hook-ups. Hook-up costs for each homeowner will vary on a lot-by-lot basis, but have been estimated by the City to cost as low as approximately \$24k to as high as approximately \$63K for 4 homeowners who are identified as being in the worst-case scenario. I do not believe my home is in the group considered a worst-case scenario.

On July 26, 2022, after citizen input and deliberation the vote by the City Council was split equally between options 1 (allow homeowners to apply for advanced septic) and 2 (proceed with the project and require mandatory hook-up) so both options died because a majority could not be reached. Had Option 2 passed, other City Council votes would be required to implement and complete the project.

Additional SOIRL grant dollars were just approved by Brevard County to cover an even greater amount of the J&K project costs so the item is now being presented to the Council again on November 29, 2022 with the same options described above.

I respectfully request that your office consider the more detailed and complete factual statement that was prepared with the assistance of the City Attorney, and provide an additional written opinion prior to the November 29, 2022 meeting so I may determine whether I can vote on this important matter.

Thank you, enjoy the holiday, and I hope to hear from you soon.

Lorraine Koss

Cocoa Councilperson District 4



Lorraine Koss

City of Cocoa
Councilperson District 4

(321) 474-8445 Work
lkoss@cocoafl.org

PLEASE NOTE: Florida has a very broad public records law. Most written communications (including contents of emails and email addresses) to or from City of Cocoa officials and employees regarding public business are public records available to the public and media upon request. Your written and e-mail communications may be subject to public disclosure. If you do not want your written and email communications released in response to a public records request, do not send written or email communications to City of Cocoa officials and employees. Instead, contact this office by phone.

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Save Our Indian River Lagoon
Estimated Private Homeowner Costs

8/4/2022

Typical Lot Depth	190			
Typical Setback	80			
	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" service line (in back)	l.f.	150	50	7500
septic tank abandon	L.S.	1	2500	2500
roadbase/fill	L.S.	1	3000	3000
				0
hardscape miscellaneous	s.y.	100	20	2000
driveways	c.y.	5	120	600
concrete decks/sidewalk	c.y.	10	120	1200
shrubs/trees	L.S.	1	4000	4000
sod	s.y.	100	5	500
irrigation repairs	L.S.	1	2000	2000
bore service line	l.f.	0	0	0
				\$23,300
		Contingency		20%
				\$27,960

Typical Lot Depth	300			
Typical Setback	125			
	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" service line (in back)	l.f.	200	50	10000
septic tank abandon	L.S.	1	2500	2500
roadbase/fill	L.S.	1	3000	3000
				0
hardscape miscellaneous	s.y.	100	20	2000
driveways	c.y.	5	120	600
concrete decks/sidewalk	c.y.	10	120	1200
shrubs/trees	L.S.	1	4000	4000
sod	s.y.	100	5	500
irrigation repairs	L.S.	1	2000	2000
bore service line	l.f.	0	0	0
				\$25,800
		Contingency		20%
				\$30,960

64

Best Case

Typical Lot Depth

180

Typical Setback

50

	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" service line (in front)	I.f.	50	50	2500
septic tank abandon	L.S.	1	2500	2500
roadbase/fill	L.S.	1	3000	3000
				0
hardscape miscellaneous	s.y.	100	20	2000
driveways	c.y.	5	120	600
concrete decks/sidewalk	c.y.	10	120	1200
shrubs/trees	L.S.	0.5	4000	2000
sod	s.y.	100	5	500
irrigation repairs	L.S.	0.5	2000	1000
bore service line	I.f.	0	0	0
				\$15,300
			Contingency	20%
				\$18,360

Worst Case

Typical Lot Depth

240

Typical Setback

80

	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" PVC service line	I.f.	275	\$50	\$13,750
septic tank abandon	L.S.	2	\$2,500	\$5,000
roadbase/fill	L.S.	2	\$6,000	\$12,000
				\$0
hardscape miscellaneous	s.y.	100	\$20	\$2,000
driveways	c.y.	10	\$120	\$1,200
concrete decks/sidewalk	c.y.	0	\$120	\$0
shrubs/trees	L.S.	0	\$4,000	\$0
sod	s.y.	50	\$5	\$250
irrigation repairs	L.S.	1	\$2,000	\$2,000
bore service line	I.f.	200	\$80	\$16,000
				\$52,200
			Contingency	20%
				\$62,640

House lower than Road Case

Typical Lot Depth

100

Typical Setback

25

	<u>Units</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
new 4" PVC service line	l.f.	50	\$50	\$2,500
septic tank abandon	L.S.	1	\$2,500	\$2,500
roadbase/fill	L.S.	1	\$6,000	\$6,000
				\$0
hardscape miscellaneous	s.y.	50	\$20	\$1,000
driveways	c.y.	10	\$120	\$1,200
concrete decks/sidewalk	c.y.	0	\$120	\$0
shrubs/trees	L.S.	0	\$4,000	\$0
sod	s.y.	30	\$5	\$150
irrigation repairs	L.S.	0.5	\$2,000	\$1,000
bore service line	l.f.	0	\$80	\$0
private pump and tank	l.s.	1	\$6,000	\$6,000
				\$20,350
			Contingency	20%
				\$24,420

<u>Unit Cost</u>	<u>Lots</u>	<u>Cost</u>
\$62,640	4	\$250,560
\$30,960	50	\$1,548,000
\$27,960	20	\$559,200
\$24,420	18	\$439,560
	92	
TOTAL ESTIMATE		\$2,797,320
Impact Fees		\$161,000
		\$2,958,320

666

Category	4" PVC Line	Septic Abandon	Road Base Fill	Hardscape	Driveways	Decks Sidewalks	Trees Scrubs	Sod	Irrigation Repairs	Bore Service Line	Private Pump	Total with 20% Contingency
Koss Home	\$3500 80 ft	\$2500	\$3,000	\$2000	\$600	\$1200	\$4000	\$500	\$2000	0	0	\$23,160
(1) 15 Houses (East of IRD)	\$2500 50 ft	\$2500	\$6000	\$1000	\$1200	0	0	\$150	\$1000	0	\$6000	\$24,420
(2) 19 Houses	\$7500 150 ft	\$2500	\$3000	\$2000	\$600	\$1200	\$4000	\$500	\$2000	0	0	\$27,960
(3) 50 Houses	\$10,000 200 ft	\$2500	\$3000	\$2000	\$600	\$1200	\$4000	\$500	\$2000	0	0	\$30,960
(4) 4 Houses	\$13,750 275 ft	\$5000	\$12,000	\$2000	\$1200	0	0	\$250	\$2000	\$16,000	0	\$62,640

The above table illustrates the cost per household of accessing sewer service for the 88 homes in the project. The basis for these costs is the Cocoa Utility Director's cost estimate of the properties organized into 4 categories presented to Cocoa Council 8/9/2022.

Heyward, Katharine

From: Anthony A. Garganese <agarganese@orlandolaw.net>
Sent: Monday, March 20, 2023 6:53 PM
To: Heyward, Katharine
Subject: RE: [EXTERNAL] FW: Request for Conflict of Interest Guidance

Kathy,

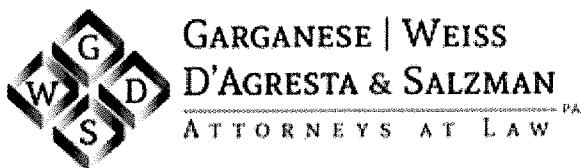
After our phone call this evening, I spoke with the Utilities director. With respect to your questions, he advised:

1. J&K Septic to Public Sewer Conversion Project was identified as an original project in the SOIRL Plan and there is a funding earmark for that project. If the City withdraws from the J&K Project, the property owner's within the J&K area will have the option (not required) of applying to the County for Advanced Septic Treatment funding up to \$18,000 to install an Advanced Septic Treatment System. However, the amount of funding available varies on a lot by lot basis. The following interactive map demonstrates the amount of potential funding on a lot-by-lot basis within the J&K area, and outside of the J&K as well. The amount of the eligible reimbursement is based on an estimated nitrogen load for the property. Put your cursor over the lot and click. A drop down box appears and identifies the amount of the nitrogen load for the specific lot and the amount of funding eligibility to convert to a nitrogen-reducing septic system. The County's notation in the left margin also indicates that the properties shaded in Red may be eligible for more reimbursement than the amount shown and that property owners should contact the county to confirm the amount. Because the J&K area is closer to the Indian River, the lots within J&K would be eligible for a larger reimbursement than the surrounding lots located outside of the J&K area; with a greater reduction in eligible funding for properties located further to the west towards US 1 (see areas shaded in green). <https://brevardbocc.maps.arcgis.com/apps/MapSeries/index.html?appid=4051c47af44f4667b27fe19825de9e2e>
2. The funding for Advanced Septic is a separate allocation of money available from the County and property owners are eligible on a first come first served basis depending on available funding collected by the County from the tax.
3. Like the potential cost of the lateral connections to the proposed City sewer system if the J&K project is pursued by the City Council, the cost of the advanced septic treatment system will vary on a lot-by-lot basis depending on the site conditions for each lot. The City utilities director and his staff have not estimated those costs because the City would not be involved in the advanced septic treatment process.
4. If you have additional questions about the advanced septic reimbursement, you can contact Virginia Barker, Brevard County Director of Natural Resources – 321-633-2016

I hope this additional information helps with your analysis.

Regards,

Anthony



Anthony A. Garganese, Shareholder

Board Certified in City, County & Local Government Law
Florida Certified Circuit – Civil Mediator
Florida Supreme Court – Trained Arbitrator
111 N. Orange Ave., Suite 2000
P.O. Box 2873
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Fax (407) 425-9596
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Cocoa (866) 425-9566
Website: www.orlandolaw.net
Email: sshell@orlandolaw.net

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From: Heyward, Katharine [mailto:HEYWARD.KATHARINE@leg.state.fl.us]
Sent: Monday, March 20, 2023 3:38 PM
To: Anthony A. Garganese <agarganese@orlandolaw.net>
Subject: RE: [EXTERNAL] FW: Request for Conflict of Interest Guidance

WARNING - EXTERNAL EMAIL: Ensure you trust this sender before clicking on any links or attachments. Please report any suspicious mail.

Would you have time for me to ask you a few questions about option of withdrawing and, particularly, letting the lot owners apply for up to \$18,000 in reimbursement for advanced septic systems?

Kathy Heyward
850-488-7864

From: Anthony A. Garganese <agarganese@orlandolaw.net>
Sent: Monday, February 6, 2023 10:01 AM
To: Lorraine Koss <lkoss@cocoafll.gov>; Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: [EXTERNAL] FW: Request for Conflict of Interest Guidance

For the call at 10 am, please call my cell phone at 407-595-3766. Thank you.



GARGANESE | WEISS
D'AGRESTA & SALZMAN
ATTORNEYS AT LAW P.A.

Garganese, Weiss, D'Agresta & Salzman, P.A.
Anthony A. Garganese, Shareholder
Board Certified in City, County & Local Government Law
111 N. Orange Ave., Suite 2000
P.O. Box 2873
Orlando, Florida 32802-2873
Phone (407) 425-9566
Fax (407) 425-9596
Kissimmee (321) 402-0144
Cocoa (866) 425-9566
Website: www.orlandolaw.net
Email: sshell@orlandolaw.net

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From: Lorraine Koss [<mailto:lkoss@cocoafl.gov>]
Sent: Monday, February 6, 2023 9:19 AM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Anthony A. Garganese <agarganese@orlandolaw.net>; Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: [EXTERNAL] FW: Request for Conflict of Interest Guidance

WARNING - EXTERNAL EMAIL: Ensure you trust this sender before clicking on any links or attachments. Please report any suspicious mail.

Esq. Heyward,

To help think about comparisons within the class impacted by the J & K project, this morning I put together the attached table. It is based on the Utility Director's field observation estimates that were presented to Council on 8/9/2022, also attached here and previously sent to you.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Lorraine Koss
Sent: Thursday, February 2, 2023 5:54 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Esq. Heyward,

Attached is the estimate for my home, 2115 N. Indian River Drive. Also, you asked about the tier estimates for lateral lines to connect to sewer. I've attached the detailed breakdown based on "general observations from the field". These were part of the presentation by the Utility Director at the August 9, 2022 City Council meeting. They are also contained (without detail) on the last page of the Statement of Fact package we previously sent you.

We will look forward to your call tomorrow at 10 a.m.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Sent: Thursday, February 2, 2023 4:28 PM
To: Lorraine Koss <lkoss@cocoafl.gov>
Subject: FW: Request for Conflict of Interest Guidance

EXTERNAL MESSAGE - USE CAUTION WITH LINKS AND ATTACHMENTS!

Ms. Koss,

This is the estimate that I got, which I'm thinking is your neighbor's.

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Monday, January 30, 2023 12:38 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Esq. Heyward,

Again, thanks for your patience. I apologize for the piecemeal email documents, but you may also be interested in a second quote on another neighbors home as a comparison. She is on the East side of Indian River Drive where the topography will require a waste pump to meet the gravity line. There are at least 15 homes in this situation.

As I explained on the phone, both quotes were obtained by Linda Dolphin to keep my name (and, any bias) from the bidder. Cocoa Beach Plumbing is one of Brevard County Natural Resource Department's approved plumbing companies for the Save Our Indian River Lagoon septic to sewer projects.

If needed, we can seek other estimates as well.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Lorraine Koss
Sent: Monday, January 30, 2023 12:00 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Esq. Heyward,

Please see the attached additional information on costs for connecting from septic to sewer. I just received it this morning.

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Lorraine Koss
Sent: Friday, January 27, 2023 2:55 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>; Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: RE: Request for Conflict of Interest Guidance

Dear Esq. Heyward,

Thank you for your patience with my inquiries about a conflict of interest on the Indian River Lagoon septic to sewer project vote. I've received an estimate for hooking up septic to sewer on the property my husband and I own. Is this sufficient to change you and Mr. Zuilkowski's opinion on my place in the class and therefore my right to vote? Is this enough evidence to bring before the full Ethics Commission for a formal ruling? Below is the Question Summary and attached is the estimate along with a map showing my property.

QUESTION SUMMARY

If Council votes to approve moving forward on the J & K Project, Councilwoman Koss and her husband own 1 of 88 homes located at 2115 N. Indian River Drive in Cocoa, Florida that would be eligible for and mandated to hook up to the sewer line once it is completed. As currently estimated, most of the costs of the sewer main line construction and lateral line hookups would be covered by the Save Our Indian River Lagoon funds already available and matching Florida Department of Environment Program Grants if approved. The costs estimated for the project are:

- \$9,000,000 Main Line Construction-Engineering Estimate by Consultant
- \$3,000,000 Lateral Line Hookups - (Visual Field Survey by Cocoa's Utility Department with no specific houses included in the estimate.)

An estimate on Councilwoman Koss' property has been obtained by one of the plumbers specifically approved by Brevard County Natural Resources to work on these septic to sewer projects. The costs to her property for hookup to the sewer line is \$8,097 plus up to an additional \$2,000 in Septic Abandonment not included in the quote (attached), for a total of \$10,097. Of the estimated \$3,000,000 cost for the lateral line hook up, Councilwoman Koss's estimate attributes .04% of the overall total. (\$10,097/\$3,000,000). Her share of the mainline sewer connection would be the same as the rest of the 88 homeowners. (88 homes/\$9,000,000 cost).

The degree to which there is uncertainty about the project lies in whether the project would be completed if final bids are much greater than expected or fewer grant dollars than are anticipated, (based upon awards to other municipalities), are awarded. If either occurs, it is expected, as has routinely occurred with this council, that a revote on the financial feasibility of the project would occur and a new vote taken as to whether to move forward with construction. Councilwoman Koss's special private gain or loss consideration would not change if this occurs.

For the Good of Cocoa, *Lorraine*



Lorraine Koss
City of Cocoa
Councilperson District 4

(321) 474-8445 Work
lkoss@cocoafl.org

Lorraine Koss
Cocoa City Councilperson District 4
65 Stone Street
Cocoa, FL 32922
321-474-8445

From: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>
Sent: Monday, November 28, 2022 5:09 PM
To: Lorraine Koss <lkoss@cocoafl.gov>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: Request for Conflict of Interest Guidance

EXTERNAL MESSAGE - USE CAUTION WITH LINKS AND ATTACHMENTS!

Ms. Koss,

Please disregard the advice rendered to you on October 24, 2022, regarding voting on the septic to sewer project in light of the additional information we received from you on 11/23/22 and the conversation we had today (you, Mr. Garganese, Mr. Zuilkowski (General Counsel), and I), in which new guidance was given. If any new information comes along, please feel free to reach out to me.

Sincerely,

Kathy Heyward

Katharine B. Heyward

Attorney
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
(850) 488-3077 (Fax)
www.ethics.state.fl.us

Physical address:
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

From: Lorraine Koss <lkoss@cocoafl.gov>
Sent: Wednesday, November 23, 2022 3:59 PM
To: Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>; zuilkowski.steven@leg.state.fl.us
Cc: Anthony Garganese (OrlandoLaw) <agarganese@orlandolaw.net>
Subject: Request for Conflict of Interest Guidance

Dear Esq. Heyward,

At the suggestion of the City of Cocoa's attorney, I am providing additional detailed information related to my September 21, 2022 request for a written conflict of interest opinion because I intend to rely on the guidance being provided by your office. This matter is currently scheduled to be heard by the City Council on Tuesday, November 29, 2022. Due to time constraints regarding grant funding availability and immediate pending septic system decisions affecting some of the interested parties, this matter needs to be considered by the City Council soon.

Below is my executive summary of the facts and matter being considered by the City Council. However, I worked with the City Attorney to also prepare a more detailed and complete factual statement for your consideration which is attached to this email.

The Cocoa City Council will decide among three options for the J & K Septic to Sewer Project. The 3 options are: (1) Withdraw from the project and let homeowners submit and qualify for advanced septic treatment funding from SOIRL; (2) Require mandatory hook up of all homes identified in the project and allow the city to apply for SJRWMD and FDEP funding while also specifying whether individual homeowners or utilities/utilities rate payers would be responsible for any cost overruns related to the project; or (3) Delay a decision to move forward with the project.

I am the district 4 Councilperson who is one of five voting members on the council. I have previously recused myself on this vote. The project is a part of Brevard County's Natural Resource Department's *Save Our Indian River Lagoon 10-year plan* to stop the flow of pollutants to the Indian River Lagoon. Brevard County voters previously approved 1/2 cent sales tax to provide a funding source for the projects identified in the plan. If Option 1 were to pass and the project is withdrawn, I would be 1 of the 88 homeowners who would immediately be eligible to apply for an individual grant of up to \$18k to upgrade my septic system and would be required to pay tax on any benefit received. If Option 2 were to pass, I would be required to hook up to the sewer line being constructed as part of the project and potentially have all or part of my hook up and septic removal costs paid for by grants while being taxed on any benefit received. I was advised to

recuse myself because of the special private gain test including the 1% size of class guidance issued by the Commission on Ethics. If only the 88 single family home owners constitute the class size, my interest would be approximately 1.13%.

Brevard County has identified this stretch of Indian River Drive as a contributor to the pollution levels in the Indian River Lagoon including the existing septic tanks in the subject J&K project area. Projects incorporated in the plan to remove excess nutrients (pollutants) provide a benefit the entire county. \$9 M of the \$12M septic to sewer project as currently estimated by the City will be for installation of the gravity sewer line which becomes a capital asset of the City. The balance of \$3M is estimated to be needed for lateral line installation and septic tank removal, normally paid by the homeowner. However, grant dollars are available for these lateral lines/septic tank removal and may cover the entire cost of the homeowners' hook-ups. Hook-up costs for each homeowner will vary on a lot-by-lot basis, but have been estimated by the City to cost as low as approximately \$24k to as high as approximately \$63K for 4 homeowners who are identified as being in the worst-case scenario. I do not believe my home is in the group considered a worst-case scenario.

On July 26, 2022, after citizen input and deliberation the vote by the City Council was split equally between options 1 (allow homeowners to apply for advanced septic) and 2 (proceed with the project and require mandatory hook-up) so both options died because a majority could not be reached. Had Option 2 passed, other City Council votes would be required to implement and complete the project.

Additional SOIRL grant dollars were just approved by Brevard County to cover an even greater amount of the J&K project costs so the item is now being presented to the Council again on November 29, 2022 with the same options described above.

I respectfully request that your office consider the more detailed and complete factual statement that was prepared with the assistance of the City Attorney, and provide an additional written opinion prior to the November 29, 2022 meeting so I may determine whether I can vote on this important matter.

Thank you, enjoy the holiday, and I hope to hear from you soon.

Lorraine Koss

Cocoa Councilperson District 4



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