



# KIRK PINKERTON, P.A.

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## MEMORANDUM

TO: Janet Jones, Chair  
CC: Trailer Estates Board of Trustees  
THRU: Mark P. Barnebey, Esquire *MB 10/24/07*  
FROM: Scott E. Rudacille, Esquire *SER 10/22/07*  
RE: Trustee/Committee issues  
DATE: October 22, 2007

Questions have been raised regarding the proper treatment of Trustees and spouses of Trustees on Trailer Estates committees. Specifically, the first question is whether two Trustees may attend the same meeting of a Trailer Estates committee. The second question is whether it is advisable to have spouses of Trustees on a Trailer Estates committee. We will address each question individually below.

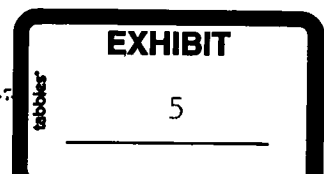
We have advised previously that the Board may want to avoid having two Trustees on the same committee, because there are inherent issues that arise with such situations. For example, when two Trustees are present discussing matters which may come before the Board, the committee meeting must be noticed as a Board meeting. Otherwise, a Sunshine violation may occur.

Secondly, the Board should consider the policy reasons behind the work of committees. Generally committees are charged with administrative, fact-finding, or advisory rolls, which work allows the Board to concentrate on policy issues. So, while it may make sense to have one Trustee present to act as a liaison with the committee, if multiple Trustees are present, it may

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Janet Jones, Chair  
October 22, 2007  
Page 2 of 2

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begin to defeat the purpose of having a committee. If a number of Trustees want to work on an issue, it may make more sense for the Board to just hold workshops on that particular issue.

As for spouses, the Sunshine Laws consider them to be separate individuals, but there are, once again, inherent issues that arise. The Attorney General previously opined that husband and wife may serve on the same governing board. FL AGO 89-06. Even though there are inherent issues with such an arrangement, there is no per se violation of the Sunshine Laws. The husband and wife would be prohibited from discussing matters in private which might foreseeably come before the board.

The same rationale would apply for committee members at Trailer Estates. If a husband and wife serve on the same committee, and that committee is subject to the Sunshine Laws, the husband and wife are prohibited from discussing committee business when they are together in private. However, if a Trustee's spouse serves on a committee, the Trustee and spouse may discuss park business in private, as they do not serve on the same board.

If you have any questions or wish to discuss this further, please do not hesitate to contact us.



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PLEASE RESPOND TO BRADENTON OFFICE

February 28, 2008

COPY

**VIA FAX and U.S. MAIL DELIVERY**

Janet Jones, Chair of Board of Trustees for Trailer Estates Park and Recreation District  
As Liaison to Policy and Procedures Committee  
1903 69th Avenue West  
Post Office Box 6298  
Bradenton, Florida 34281-6298

Re: **Issues Raised at Policy and Procedures Committee Meeting**

Dear Janet:

As you know, there were a number of issues raised at the Policy and Procedures Committee meeting I attended on February 15<sup>th</sup>. I will briefly provide some follow-up to a few of those issues below.

## 1. Procurement Policy

At the meeting I mentioned that I would provide an example of a procurement policy from another local government. Enclosed please find the adopted policies of the Lakewood Ranch Inter-District Authority regarding the purchase of goods, supplies or materials, and the policy for procurement of maintenance contracts. While these policies are designed to comply with specific statutory procurement rules which are not applicable to Trailer Estates, it may provide some ideas as to desirable practices.

## 2. Duties of the Chair, Hiring and Firing, Administration

During the committee meeting, we discussed the possibility of appointing a Board member, such as the Chair, to act as an administrative official for the District. This would be similar to the way that a mayor would act for a city or that the county administrator would act for a county. Whether or not to create such a position is a policy decision to be made by the Board

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Janet Jones, Chair of Board of Trustees  
Trailer Estates Park and Recreation District  
February 28, 2008  
Page 2 of 3

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of Trustees, but the purpose would be to allow for the day-to-day operational and some, if not all, employee issues of the District to be handled without the requirement for a public meeting of the Board.

### 3. Committees and Subcommittees Sunshine Issues

As we discussed, when a public body establishes a committee which is charged with making recommendations to the public body, that committee is subject to the Sunshine Law. Thus, once committee members have been appointed, they may not discuss committee business with other committee members outside of a noticed, public meeting. So, regardless of whether such a meeting is termed a subcommittee or not, committee members may not meet in private to discuss the work of the committee.

### 4. Property of Clubs Affiliated with Trailer Estates

There was a question raised regarding whether personal property which is provided by individuals, and utilized by various Trailer Estates Clubs remains the property of the individual, or whether it becomes property of the Club or the District. Unfortunately, this is a very fact-driven inquiry, so each case will be different. Factors which may impact this issue include whether the property was given or sold to the District, and whether the District has accepted it. If a piece of real or personal property is being donated to the District, we recommend that the Board be required to formally accept the property by vote. This would ensure that the Board of Trustees wanted the donation and the responsibilities that may come along with the donation.

### 5. Newsletter and Bulletin Board

There are a number of issues which are raised when a local government sponsors a newsletter or bulletin board. For example, once the District opens a matter for public input, a range of freedom of speech and public forum issues arise. We are in the process of obtaining a copy of the Trailer Estates newsletter and will provide further comment after we have had an opportunity to review it for potential issues.

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Janet Jones, Chair of Board of Trustees  
Trailer Estates Park and Recreation District  
February 28, 2008  
Page 3 of 3

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As always, if you have any questions, please do not hesitate to contact me.

Sincerely,

KIRK • PINKERTON, P.A.



Scott E. Rudacille  
For the Firm

SER

Enclosures

cc: Board of Trustees (w/ enclosures)  
Policy and Procedures Committee (w/ enclosures)  
Mark P. Barnebey, Esquire (w/o enclosures)

1.8 PURCHASE OF GOODS, SUPPLIES, OR MATERIALS.

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- (1) **Scope.** All purchases of goods, supplies, or materials exceeding the amount provided in Section 287.017, Florida Statutes, for CATEGORY FOUR, as such category may be amended from time to time, shall be purchased under the terms of these Rules. Contracts for purchases of "goods, supplies, and materials" do not include printing, insurance, advertising, or legal services.
- (2) **Definitions.**
  - (a) "Invitation to Bid" is a written solicitation for sealed bids with the title, date and hour of the public bid opening designated specifically and defining the commodity involved. It includes printed instructions prescribing conditions for bidding, evaluation criteria, and provides for a manual signature of an authorized representative.
  - (b) "Request for Proposal or Qualification" is a written solicitation for sealed proposals or qualifications with the title, date, and hour of the public opening designated and requiring the manual signature of an authorized representative. It may provide general information, applicable laws and rules, statement of work, functional or general specifications, proposal instructions, work detail analysis, and evaluation criteria as necessary.
  - (c) "Responsive bid/proposal" means a bid or proposal which conforms in all material respects to the specifications and conditions in the invitation to bid or request for proposal and these rules, and the cost components of which are appropriately balanced. A bid/proposal is not responsive if the person or firm submitting the bid fails to meet any requirement relating to the qualifications, financial stability, or licensing of the bidder.
  - (d) "Lowest responsible bid/proposal" means, in the sole and absolute discretion of the Authority whether or not reasonable the bid or proposal (i) submitted by a person or firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure good faith performance, (ii) is responsive to the invitation to bid or request for proposal as determined by the Authority Board; and (iii) is the lowest cost to the Authority. Minor variations in the bid may be waived by the Authority Board. Mistakes in arithmetic extension of pricing may be corrected by the Authority Board. Bids may not be modified after opening.
  - (e) "Goods, supplies, and materials" do not include printing, insurance, advertising, or legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.
  - (f) "Purchase" means acquisition by sale, rent, lease, lease/purchase, or

installment sale. It does not include transfer, sale or exchange of goods, supplies, or materials between the Authority and any federal, state, regional, or local governmental entity or political subdivision of the state.

(g) "Emergency purchase" means a purchase necessitated by a sudden unexpected turn of events (e.g. acts of God, riot, fires, floods, hurricanes, accidents, or any circumstances or cause beyond the control of the Authority in the normal conduct of its business), where the Authority Board finds that the delay incident to competitive bidding would be detrimental to the interests of the Authority.

(3) **Procedure.** When a purchase of goods, supplies, or materials is within the scope of this Rule, the following is appropriate:

(a) The Authority Board shall cause to be prepared an Invitation to Bid or Request for Proposal or Qualifications as appropriate.

(b) The Notice of Invitation to Bid or Request for Proposal or Qualifications shall be advertised at least once in a newspaper of general circulation in the area of Lakewood Ranch Community Development Districts 1-6. The notice shall allow at least seven (7) days for submittal of responses, unless the Authority Board, for good cause, determines a shorter period of time is appropriate.

(c) The Authority may maintain lists of persons interested in receiving notices of invitations to bid or requests for proposals or qualifications. Persons who provide their name and address to the Authority office for inclusion on the list shall receive notices by mail.

(d) Bids or proposals shall be opened at the time and place noted on the Invitation to Bid or Request for Proposal or Qualification. Bids and proposals shall be evaluated in accord with the invitation or request and these Rules.

(e) The Lowest Responsive and Responsible Bid or Proposal shall be accepted; however, the Authority Board shall have the right to reject all bids, either because they are too high or because the Authority Board determines it is in the best interests of the Authority. In the event the bids exceed the amount of funds available to or allocated by the Authority Board for this purchase, the bids may be rejected. The Authority may require bidders or proposers to furnish performance and/or other bonds with a responsible surety to be approved by the Authority Board.

(f) Notice of award or intent to award, including rejection of some or all bids, and/or proposals shall be provided in writing to all bidders by United States Mail, by hand delivery, or by overnight delivery service, and by

posting same at the Lakewood Ranch Town Hall for seven (7) days.

- (g) If only one response to an Invitation to Bid or Request for Proposal or Qualifications is received, the Authority Board may proceed with the procurement for goods, supplies, or materials. If no response to an Invitation to Bid or Request for Proposal or Qualification is received, the Authority Board may take whatever steps are reasonably necessary in order to proceed with the procurement of goods, supplies, or materials in the best interests of the Authority.
- (h) The Authority Board may make an emergency purchase without complying with these Rules. The fact that an emergency purchase has occurred or is necessary shall be noted in the minutes of the next Authority Board meeting and notified at such meeting.
- (i) Notwithstanding anything contained herein to the contrary, the Authority shall not effect a Purchase of any goods, supplies or materials from any party who is presently employed by the Authority or who is employed by any other quasi-governmental agency operating within the Lakewood Ranch community.

**Specific Authority:** § 190.011(5), Fla. Stat.

**Law Implemented:** § 190.033, Fla. Stat.

## 1.10 CONTRACTS FOR MAINTENANCE SERVICES.

- (1) **Scope.** All contracts for maintenance of any Authority facility or project shall be let under the terms of these Rules if the cost exceeds the amount provided in Section 287.017, Florida Statutes, for CATEGORY FOUR, as such category may be indexed or amended from time to time by the State of Florida Department of Management Services. The maintenance of these facilities or projects may involve the purchase of contractual services and/or goods, supplies, or materials as defined in these Rules. Where a contract for maintenance of such a facility or project includes goods, supplies, or materials and/or contractual services, the Authority Board may, in its sole and absolute discretion whether or not reasonable, award the contract according to the Rules in this subsection in lieu of separately bidding for maintenance, goods, supplies, or materials, and contractual services. However, a project shall not be divided solely in order to avoid the threshold bidding requirements.
  
- (2) **Procedure.**
  - (a) Notice of Invitation to Bid or Request for Proposal shall be advertised at least once in a newspaper of general circulation in the area of Lakewood Ranch Community Development Districts 1-6. The notice shall allow at least seven (7) days for submittal of bids, unless the Authority Board, for good cause, determines a shorter period of time is appropriate.
  
  - (b) The Authority Board may maintain lists of persons interested in receiving notices of invitations to bid or requests for proposals. Persons who provide their name and address to the Authority office for inclusion on the list shall receive notices by mail.
  
  - (c) In order to be eligible to submit a bid or proposal, a firm or individual must, at the time of receipt of the bids or proposals:
    1. Hold the required applicable state professional license in good standing.
    2. Hold all required applicable federal licenses in good standing, if any.
    3. Hold a current and active Florida corporate charter or be authorized to do business in Florida in accordance with Chapter 607, Florida Statutes if the bidder is a corporation.
    4. Meet any special prequalification requirements set forth in the bid proposal specifications.

Evidence of compliance with these Rules may be submitted with

the bid, if required by the Authority Board.

- (d) Bids or proposals shall be opened at the time, date and place noted on the Invitation to Bid or Request for Proposal. Bids and proposals shall be evaluated in accordance with the invitation or request and these Rules.
- (e) To assist in the determination of the lowest responsive and responsible bidder, the Authority Representative may invite public presentation by firms regarding their qualifications, approach to the project, and ability to perform the contract in all respects.
- (f) In determining the lowest responsive and responsible bidder, the Authority Representative may consider, in addition to factors described in the Invitation to Bid or Request for Proposal, the following:
  - 1. The ability and adequacy of the professional personnel employed by each bidder or proposer.
  - 2. The past performance of each bidder or proposer for the Authority and in other professional employment settings.
  - 3. The willingness of each bidder or proposer to meet time and budget requirements.
  - 4. The geographic location of each bidder or proposer's headquarters or office in relation to the project.
  - 5. The recent, current, and projected workloads of the bidder or proposer.
  - 6. The volume of work previously awarded to each bidder or proposer.
  - 7. Whether the cost components of each bid or proposal are appropriately balanced.
  - 8. Whether a bidder or proposer is a certified minority business enterprise.
- (g) The lowest responsive and responsible bid/proposal shall be accepted; however, the Authority Board shall have the right to reject all bids in its sole and absolute discretion, whether or not reasonable, either because they are too high or because the Authority Board determines it is in the best interests of the Authority. The Authority Board may require bidders or proposers to furnish performance and/or other bonds with a responsible surety. If the Authority receives fewer than three (3) responses, the

Authority Board may, in its discretion, re-advertise for additional bids or proposals without rejecting any submitted bid or proposal. In the event the bids or proposals exceed the amount of funds available to or allocated by the Authority Board for this purchase, all bids/proposals may be rejected. Bidders or proposers not receiving a contract award shall not be entitled to recover any costs of bid/proposal preparation or submittal from the Authority.

- (h) Notice of the award or intent to award, including rejection of some or all bids or proposals, shall be provided in writing to all bidders by United States Mail, by hand delivery, or by overnight delivery service, and by posting the same in the at the Lakewood Ranch Town Hall for seven (7) days.

**Specific Authority:** § 190.011(5), Fla. Stat.

**Law Implemented:** § 190.033, Fla. Stat.