

LIBERTY COUNTY GRAND JURY
SEPTEMBER 2007 TERM
PRESENTMENT

The Grand Jury performed many tasks during this term including inquiring into some of the issues discussed by the former Grand Jury in their presentment. Our accomplishments as well as our findings and recommendations are discussed below:

CRIMINAL CASES

The Grand Jury reviewed 165 cases during this term. We issued indictments in 161 cases and no indictments in 4 cases.

LIBERTY COUNTY REGIONAL JAIL

The Grand Jury visited the Liberty County Regional Jail on November 27, 2007. We were impressed with staff's professionalism and the overall conditions in this facility. We would like to thank Mr. Doug Franks for giving us the guided tour of this facility. The only issue that the Grand Jury can comment about is that the facility needs additional medical personnel to treat inmates. **Accordingly, the Grand Jury strongly recommends that the County Commissioners or the Sheriff authorize funding to hire another Registered Nurse or other appropriate medical professional to assist the current facility medical staff.**

BOARD OF EQUALIZATION

The Grand Jury reappointed Mr. Guy Wells and Mr. Clarence McCray back on the Board. We also appointed Ms. Maria Gregory as an alternate Board member.

LIBERTY COUNTY TAX ASSESSORS OFFICE

On December 6, 2007, the Grand Jury met with Mr. Russell Wells, Chairperson of the Liberty County Board of Assessors, Ms. Glenda Roberts, Chief Appraiser, and Mr. C.W. Patterson, Assistant Chief Appraiser, to learn more about their functions. They informed us that it is the job of the Liberty County Tax Assessors Office to report all taxable property in Liberty County to include real estate and personal property. This is done in a fair and equitable assessment of all property within the 10% of the fair market value as set by the State of Georgia.

The Tax Assessor's Office consists of a staff of 16 and 1 contracted surveyor who all work directly with the Tax Commissioner. The Tax Assessors office has continuing education on issues of taxing and the staff regularly and routinely goes over issues to be sure that all things have been done according to the Georgia Law. The Tax Assessors office does not tax, nor collect fees, on any property. It simply assesses the values of properties according to the guidelines of the Tax Assessors Office.

They explained how their office determines property values, how state law requires that real property meet the 10% fair market value and generally how the 2007 tax digest was developed.

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They explained that the Liberty County Commissioners, Liberty County Board of Education, City of Hinesville, and the Liberty County Development Authority evaluates the tax digest as one of their decision making factors to determine how much money is needed to fund their budgets. They also discussed aspects of their present study. They commented that the millage rate will be left at the same rate if the tax digest remains at 8% next year. If so, county agencies would not get as much money. Furthermore, the County would be fined for being outside of the State guidelines for fair market value.

The Grand Jury commends the staff of the Liberty County Tax Assessors Office and extends its apologies for blaming this office for the increase in millage and taxes seen by the taxpayers of Liberty County. The Grand Jury also feels that this is a well run agency and the staff is to be commended on a job well done. **Accordingly, the Grand Jury has no recommendations for the Tax Assessors Office.**

LIBERTY COUNTY TAX COMMISSIONER

On January 8, 2008, the Grand Jury met with Mr. Virgil Jones, the Tax Commissioner to learn more about the functions of his office. He explained that his office collects property taxes for the county and ad valorem taxes for the state. Except for the ad valorem taxes, his office does not collect any other sales taxes. The Grand Jury asked Mr. Jones what role his office has in determining the tax digest and the millage rates. He indicated that his offices does neither, it merely collects taxes and disperses the monies collected to the appropriate county agency. He explained that the various county agencies are responsible for setting the millage rates. Each agency waits until the tax digest is published before setting their rates. He mentioned that the tax digest has increased and will continue increase because of property sales. He also mentioned that county agencies will still get a sizable amount of monies even if the millage rates that they set are lowered.

Mr. Jones stated that his office disperses the monies collected to the agencies then his staff accounts for money and balances their books at the end of each day. His office is further audited twice each year by both the county and the state.

The Grand Jury inquired about the fee the Tax Commissioner's office charges the Liberty County Board of Education for collecting their taxes. He stated that these fees are a 6 – 10 percent withholding fee which goes directly to the County Commissioners. He indicated that the Commissioners and the Board of Education negotiate in order to repeal this fee. In a letter dated January 25, 2008, Mr. Jones stated that a 2.5% fee was assessed to the Board of Education from January 1, 2007 through December 31, 2007 which equated to \$356,814.31.

The Grand Jury commends Mr. Jones and his staff for the service they perform for the county. We thank Mr. Jones for explaining the complexities of tax collection to the Grand Jury. **Accordingly, the Grand Jury has no recommendations for the Tax Commissioner.**

They emphasized that the LMRC primary mission is to provide the best health care to anyone with its available resources regardless of their ability to pay. However, Mr. Johnson explained the reasons why the hospital was losing money. For instance, individuals who fall under the patient category of "self pay" are those who work but do not have commercial health insurance or qualify for Medicare or Medicaid. Consequently, they must pay their medical expenses out-of-pocket and they generally cannot pay for the services that they receive. Also, the emergency room treats an inordinate amount of indigent patients. The LMRC has to bear the costs of these patients who cannot pay. The LMRC also faces problems with the amount they are being reimbursed by TRICARE. The Department of Defense has had to limit its funding to this program in order to fund the conflicts in Iraq, Afghanistan and other operations. Consequently, TRICARE has reduced its fee schedule which limits the amount the LMRC receives for services provided to TRICARE eligible patients. These were just a few of the reasons that Mr. Johnson explained to the Grand Jury.

In Georgia, there are 38 Critical Access Care Hospitals like LMRC. Of those, 33 are losing money. Since 2002, the LMRC has had to write off approximately 24.1 million dollars. To its credit, the Liberty County Hospital Authority has maintained a millage rate of 2 mills since 1993 even though it can levy a rate of 7 mills. Nevertheless, the LMRC has 27 days of cash on hand instead 6 months. It would be out of business in 27 days if it had to deal with a catastrophic event.

The LCHA has plans to stabilize the financial position of the LMRC. For instance, they plan on opening a clinic on the east end of Liberty County. They also plan on stepping up lobbying efforts with legislators for grants, SPLOST, or any other funding the LRMC can qualify for. It has also sought the consulting expertise of the Fanning Institute at the University of Georgia.

The Grand Jury inquired about the situation involving Dr. Carter. Mr. Long informed the Grand Jury that he was not at liberty to explain the details of this case. With that, we thanked Mr. Long, Mr. Kroell and Mr. Johnson for meeting with us.

In view of the above, the Grand Jury concluded that the matter involving Dr. Carter and the LCHA was outside the scope of our legal authority. **Accordingly, the Grand Jury has no recommendations in this matter because it is being litigated in the state courts.**

LIBERTY COUNTY DEVELOPMENT AUTHORITY

At the onset of our term, we shared the same concerns of the issues expressed by the previous Grand Jury in its presentments regarding the wastewater treatment facility. To recall, that grand jury was concerned with the way in which CH2MHill was selected for the work, the type of contract proposed, the decision to construct wastewater treatment facility which uses the membrane batch reactor process versus less expensive options, its size, the proposed cost, the way it is to be financed, and the potential financial risks involved.

As the Grand Jury, we understood that the Authority is empowered to enter into contracts with private parties with respect to projects, borrow money and issue revenue bonds as well as

construct, acquire, own, and maintain projects. Still, we decided to thoroughly scrutinize the Authority's decision to ascertain the legality of it.

The Executive Director and the Chief Financial Officer provided us with various documents to assist us with our inquiry. The following is a summary of the relevant events based on the LCDA minutes and the documents provided to the Grand Jury:

- a. The LCDA signed a master agreement with CH2MHill on December 1, 2005 for that company to provide professional engineering and environmental services.
- b. On February 26, 2007, the LCDA approved the design/build approach for the construction of the wastewater treatment facility with CH2MHill with financing provided by SunTrust Bank. The following day, Mr. Tolley received a letter from Mr. Wayne Murphy of CH2MHill with an attached booklet highlighting CH2MHill's Design Build experience in wastewater and water resource projects.
- c. On April 2, 2007, Mr. Murphy led an extensive review of conventional, sequence batch and membrane treatment processing of waste water. Mr. Murphy requested direction from the Authority on the system they wanted to select so that CH2MHill could move forward with planning for the project. After a lengthy discussion, the consensus of those present was for the Membrane treatment. However, members expressed concern about making such a momentous decision without input from all of the board members. In order to enable CH2MHill to continue design work and recognizing that five members of the board favored the Membrane treatment, a motion was made by Mr. Arnold and seconded by Mr. Ratcliffe directing CH2MHill to move toward the membrane treatment for the Authority's proposed waste water treatment facility.
- d. On April 23, 2007, Mr. Murphy provided an extensive review of the various treatments that could be selected by the Authority for a new waste water treatment facility to serve Tradeport East and additional portions of the Authority's Water/Waste Water Service Delivery Area. Mr. Murphy stated that conventional, sequential batch reactors (SBR), and membrane batch reactors (MBR) could all meet current state standards, but that the SBR and MBR could meet higher standards than conventional plants. Of the SBR and MBR, the MBR could meet the absolute highest standards and be most friendly to the environment, but was also the most expensive by a significant margin of and estimated \$8,000,000 to \$10,000,000. With a MBR, however, the ability to meet even higher standards that might be imposed by the State in the future would be much simpler to accomplish and the Authority could assure anyone concerned that they had done the absolute most possible with existing technology to protect the environment. Mr. Smith and Ms. Cole also discussed the financing proposed for the facility by SunTrust. After the extensive review

and discussion, a motion was made by Mr. Arnold and seconded by Mr. Smith directing CH2MHill to move forward with the design of the new facility using the MBR process and authorizing Mr. Brown to execute necessary documents with SunTrust for the financing of up to \$30,000,000 for construction of the facility. Mr. Arnold stated the Authority owed it to the citizens of Liberty County to construct and operate the new plant in the most environmentally friendly manner possible even if it meant a substantial increase in cost for the plant and its operation. The motion carried with six voting in favor and one (Mr. McIver) opposed.

- e. On April 27, 2007, the LCDA advertised on its website and at its office the "Request for Proposals." All proposals were due by May 28, 2007.
- f. CH2MHill submitted its proposal to the LCDA on May 24, 2007.
- g. On June 29, 2007, Chairman Brown recognized Ms. Cole and Mr. Murphy with CH2MHill. After discussion regarding the design/build process and the Authority's advertising of the RFP, a motion was made by Mr. Arnold and seconded by Mr. Quarterman to table the topic for consultation with the Authority's counsel. The motion carried unanimously.
- h. On July 23, 2007 Mr. Kelly Davis, the Authority's attorney, directed the board to a letter he had prepared for Chairman Brown and the board regarding the Authority's approval of CH2MHill's Design/Build approach for the construction of the waste water treatment facility, said approval having been authorized by the board in its regularly scheduled meeting on February 26, 2007. Discussion ensued, culminating in a motion from Mr. Williams and a second from Mr. Quarterman to seek new Request for Proposals for the project and expand the scope of advertising. The motion failed to pass with Mr. Williams, Mr. McIver and Mr. Quarterman voting in favor and Mr. Brown, Mr. Ratcliffe and Mr. Arnold voting in opposition. A motion was made by Mr. Ratcliffe and seconded by Mr. McIver to include third party oversight in the design/build contract being concluded with CH2MHill and immediately begin advertising for the third party. The motion carried unanimously. A motion was made by Mr. Ratcliffe and seconded by Mr. McIver that (1) the contract currently in final review by Mr. Davis and being concluded with CH2MHill specifically include a minority component that meets the Authority's 13% guideline, and (2) incorporate a third party oversight requirement. The motion carried with Mr. Brown, Mr. McIver, Mr. Ratcliffe, Mr. Quarterman and Mr. Arnold voting in favor and Mr. Williams voting in opposition. A motion was made by Mr. Ratcliffe and seconded by Mr. Arnold to expand the current contract in place with CH2MHill to allow them to move forward with design of the waste water treatment plant until the design/build contract currently in final review by Mr. Davis and being completed with CH2MHill is completed. The motion carried unanimously.

- i. The LCDA signed a master agreement with CH2MHill on August 24, 2007 to perform design-build related services required to provide a 2 million gallon per day wastewater treatment facility using membrane bioreactors for the treatment technology as well as the effluent outfall pipeline for the discharge of the treated effluent in the Laurel View River.

The Grand Jury met individually with the Executive Director, each Authority member and with both the Chief Financial Officer and the Authority's attorney. Each person was very cordial and cooperative during our inquiries. Moreover, all expressed that the LCDA decisions are made in the best interest of the county and we have no reason not to believe them. We also met with Mr. Wayne Murphy of CH2MHill and Mr. John Beall of OMI.

The Grand Jury's questions to the members and the staff centered on the LCDA's decision to pursue a design-build approach, how the cost of the project was determined since the plans and specifications for the project did not exist, and whether the contract opportunity met public notice requirements. Ultimately, the Authority's attorney provided the Grand Jury with a legal written opinion and copies of his legal opinions to the LCDA regarding the legality of using the "request for proposal" method to award design-build contracts which does not require that plans and specifications must be available in advance and the legal requirements for advertising public works contracts. These opinions sufficiently explained to the Grand Jury that the Authority's actions regarding these issues adequately satisfied the requirements of the Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 et seq. As for the cost of this project, each Authority member assured the Grand Jury that the taxpayers will not bear these costs because the project would be paid by impact fees assessed to the developers and ultimately to the users of this facility. The Grand Jury was generally satisfied with this explanation.

The Grand Jury commends the LCDA for its efforts in protecting our fragile coastal estuary. Still, the Grand Jury has some serious concerns with the way they awarded this contract because it seems the LCDA afforded a competitive advantage to CH2MHill.

For instance, the Grand Jury was informed that the Authority's staff was directed to seek "request for qualifications" after the meeting on February 26, 2007. The Grand Jury presumed this meant that the staff was supposed to advertise for pre-bid qualifications from responsive bidders. However, the only potential bidder to submit their qualifications was CH2MHill which occurred on February 27, 2007. It does not appear that any other firms were contacted.

In another example, the LCDA relied on examples of "Request for Proposals" (RFP) provided to it by CH2MHill to compose its RFP for this project. As a result, their RFP solicitation notice appears as though it was written in a way that it would benefit CH2MHill over other competitors.

In a further illustration, CH2MHill was contracted to provide professional engineering and environmental services through a series of task orders. Task Order #2 indicates that CH2MHill was responsible for providing preliminary cost estimates for the construction and operation of the new facilities for use in development of the antidegradation report. On April 23, 2007, CH2MHill briefed the LCDA that it could construct a facility using MBR technology at a cost ranging from \$26 million to \$30 million. It is also suggested that the LCDA make their decision

on the higher end of the range while the company will do everything possible to keep it in the low end. As far as the Grand Jury could determine, there were no estimates to support this cost range. Nevertheless, the LCDA seemingly accepted CH2MHill's recommendation without hesitation.

Also, the public solicitation of this contract opportunity was inadequate. Consistent with state law, the solicitation was posted at the Authority office and on its website. In view of the cost of this project, one would assume that it would have been prudent to advertise in other media to ensure that the Authority diligently pursued the most responsive bidder. Instead, the Executive Director indicated to the Grand Jury in a letter that advertisements in major newspapers and industry trade publications were not pursued because they were time consuming and expensive. He also believed that it was not necessary or warranted because of the Authority's exemplary experience with CH2MHill, its desire to move forward rapidly, and its discussion and approval of the CH2MHill contract on February 26, 2007. Although the Grand Jury cannot discount that other qualified firms could have seen this solicitation and simply chose not to submit a proposal, this is very unlikely considering that this project has the potential to significantly enhance a company's current and future profits. Nevertheless, we believe this was not prudent decision considering the costs of this project. In the end, it seems that CH2MHill was the only qualified bidder that was aware of this opportunity and it was the only company to submit a bid. Interestingly, the Executive Director's letter suggests that the Authority was not interested in seriously considering bids other than the one from CH2MHill. This tends to support the Grand Jury's view that the LCDA deliberately afforded a competitive advantage to CH2MHill.

The Grand Jury was concerned about the way the RFP states that the LCDA desired to qualify and select one integrated design-build-operate firm to design and construct this facility but not to operate this facility at this time. The Grand Jury asked several members whether the LCDA had decided who would operate this facility. They each informed the Grand Jury that this decision had not been made and that the LCDA would be requesting proposals from companies with the expertise to operate these types of facilities. The Grand later asked Mr. Murphy and Mr. Beall if there had been a decision that OMI will operate this facility. Both men indicated that the LCDA had not determined that OMI will operate this facility. Each believed that OMI would submit a proposal when this opportunity presents itself. We were informed that OMI had advised the LCDA on operational matters regarding a facility of this type during several value engineering meetings that CH2MHill had with the LCDA. It seems that OMI now stands in the best position to be awarded this contract once the RFP is advertised because of their early involvement with this project.

The Grand Jury believes that the LCDA should have taken extra care to guard against creating the appearance that it afforded preferential treatment to CH2MHill in awarding this contract. Unfortunately, it did not. As it stands, the LCDA is now obligated to a contract that quotes in estimated cost of \$30,000,000 and it seems that the only assurance the LCDA has that the project costs will not exceed this amount is a verbal pledge from CH2MHill that it will do everything in its power to keep the actual costs below this estimated cost.

As stated earlier, the Grand Jury acknowledges that the LCDA's actions satisfied the requirements of the Georgia Local Government Public Works Construction Law for the reasons

stated above. However, public works contracting must be accomplished in a way that it fosters competition. If our view of this situation is accurate, the LCDA did not adhere to this fundamental principle in awarding this contract.

The Grand Jury carefully deliberated about our concerns and considered various recommendations that were intended to maintain the integrity of the procurement process. We ultimately determined that, at this point, those recommendations could adversely affect the taxpayers financially in the end. The Grand Jury believes that it has no choice but to make the following recommendation regarding this matter. **Accordingly, the Grand Jury recommends that the LCDA should conduct open and fair competition when contracting future public works in a way that it preserves the integrity of the procurement process.**

Conclusion

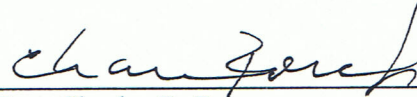
The Grand Jury is privileged to have served the citizens of Liberty County during this term. We found this experience to be both rewarding and educational.

Danny Robles, Foreperson
John R. Floyd, Assistant Foreperson
Donita T. Strickland, Clerk
Kathryn G. Walden, Assistant Clerk
Tommie Axon
Blanton Bacon
Ann M. Bean
Claudia H. Bryant
Yvonne B. Crooks
Bernadette D. Dasher
James E. Gaulden
Leroy George Jr.
Robert Gary Gilliard
Willie Graham
Maria A. Gregory
Marybel Laboy
Gretta F. Logan
Randy G. Mobley
Albert Odria
Carmen M. Ortiz
Anthony L. Sawyer
Janice C. Troha
Donnie H. Walker

ORDER FOR FILING AND PUBLICATION OF GRAND JURY PRESENTMENTS

The above and foregoing presentments of the Grand Jury for the September Term, 2007, of the Superior Court of Liberty County having been presented to the Court, it is hereby ordered that said presentments shall be filed by the Clerk of Superior Court and published in the legal organ of said county in the manner provided by law for legal advertisements.

So ordered on this 14th day of February 2008



Hon. Charles P. Rose
Judge of Superior Court,
Atlantic Judicial Circuit of Georgia

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