

JUDGE DISMISSES KCB CITY HALL INJUNCTION, BUT LEAVES THE DOOR OPEN

Case hinges on 'legislative' or 'administrative' interpretation of \$8.375 million contract

W ALEX RICKERT
alex@keysweekly.com

In a Key West hearing on Sept. 21 between the city of Key Colony Beach and resident Laurie Swanson, Judge Mark Jones declined to provide a final ruling that could largely close the door on KCB's years-long City Hall "repair or rebuild" debate.

But Jones' comments, as well as those of all attorneys, clearly established the pivotal question moving forward as both sides prepare for a second hearing: Is an \$8.375 million contract for construction of a new City Hall merely an administrative budgetary item, or should the 3-2 vote of the Key Colony Beach City Commission to award the contract on July 20 be viewed as a legislative action? The latter appears to be clearly subject to challenge via a referendum per KCB's code of ordinances, as Swanson has steadfastly pursued in the months following the commission's decision, while the former is not.

In the weeks since the commission's July vote, Swanson gathered two signed versions of petitions from 264 registered voters in Key Colony Beach, 244 of which were verified by Monroe County Supervisor of Elections Joyce Griffin in a petition audit dated Sept. 13. The city's code outlines provisions for a referendum, stating that if petitions are signed by 25% or more of KCB's registered voters and returned within 45 days of issuance, they may serve to suspend the effective date of the City Hall vote. Speaking to the Weekly shortly after the July vote, Griffin said the city had 650 registered

voters at the time, requiring 163 signatures to pursue a referendum.

However, when Swanson turned in the petitions on Sept. 13, a letter from the city was waiting for her. Signed by City Administrator Dave Turner, the letter referenced ongoing legal action and asserted the city's position that the "Referendum Petition is not the appropriate legal mechanism and remedy to challenge the City's discretionary-level planning decision.

"As such," it continued, "the submitted petition will not be placed on a future agenda, the City will not be holding a referendum vote of the electors, and it shall not suspend any action on the matter."

"The letter given was from legal as per our charter, and as always, as the City Administrator, I have to sign most documents in day-to-day operations," Turner said in a text message to the Weekly on Sept. 26. "As far as the proceedings, I'm glad we are getting closer to a decision."

Thursday's hearing was limited in its official scope, intended only to address Swanson's injunction after the City Commission's vote, filed on July 27, and the city's motion to dismiss said petition for injunction.

Representing the city, Vernis & Bowling attorneys Scott Black and Ryan Benninger again argued that the contract was a discretionary budgetary item. Among other items, they said the petition for injunctive relief should fail as its "sole basis" was to provide time to pursue a referendum, which the city has repeatedly asserted is invalid and will not occur. The motion to dismiss also invoked arguments of sovereign immunity and said that pursuit of the new hall would only cause "irreparable harm" to the building and not Swanson herself, a critical element when considering injunctive relief.

"It's immaterial whether (a contract) is \$8.5 million or whether it's \$150," Black said. "If a referendum petition was used in this manner, you could challenge potentially every decision that's made by the government,

and that's not the purpose and that's not the intent behind it."

Citing several cases both within and outside Florida in which municipalities' decisions on large capital expenditures were deemed legislative functions, attorney Matthew Hutchinson argued that such a large-scale project was far beyond the award of a simple contract.

"The city keeps talking about the word 'contract.' ... This is so much more than that," he said, adding that the \$8.4 million price tag still does not include multiple "incalculable" related costs and that a lone fully-responsive bid did not constitute a good-faith competitive bidding process. "The 264 that have already signed the petition are 40% of the total registered electorate. The people want to be heard."

Offering a preliminary dismissal of the injunction "without prejudice" – meaning it could be refiled – Jones asked Hutchinson to return with an amended motion reflecting developments made in the case since its original filing, but declined to make a ruling characterizing the contract award as legislative or administrative. As he outlined, the amended petition must include acknowledgement and argument against the city's referendum dismissal, proof of a lack of other legal remedies for Swanson, and clarification of the irreparable injury alleged in the original motion.

"The court review is limited to the four corners of the complaint," Jones said. "That doesn't diminish by any means the passion with which the plaintiff and a number of other residents of the community feel about this issue."

Jones gave until Sept. 29 for the filing of an amended motion, which Hutchinson said was already largely written. Key Colony attorneys will then have 20 days to file a response before the case will, in all likelihood, head to a second hearing with Jones.

In a Sept. 23 email to the like-minded Concerned in KCB group titled "Gut Punch from KCB Commission," Swanson called the day "disappointing all around."

"We are hopeful, but not certain that we will prevail," she wrote. "We are fighting a city commission that is acting outside of KCB ordinance and Florida law. ... We lost the first set of arguments, but we intend to win the match."