

LAKELAND REGIONAL SEWER DISTRICT

RESOLUTION NO. 2020-02

A RESOLUTION AMENDING AND REPLACING IN ITS ENTIRETY THAT CERTAIN RESOLUTION NO. 2019-02 ESTABLISHING AND MEMORIALIZING THE POLICY AND PROCEDURES FOR THE COLLECTION OF UNPAID CHARGES IN CERTAIN SITUATIONS.

WHEREAS, on May 13, 2019, the Lakeland Regional Sewer District, adopted Resolution 2019-02, and now the Board of Trustees wishes to put for this amending resolution; and

WHEREAS, the Lakeland Regional Sewer District, hereinafter usually "the District," is a regional sewer district duly organized and operated by I.C. 13-26; and

WHEREAS, the District is authorized to "[f]ix, alter, charge, and collect reasonable rates and charges," pursuant to I.C. 13-26-5-2(7); and

WHEREAS, the District is authorized to adopt rules, regulations, and resolutions for "[t]he control of the administration and operation of the district's service and facilities," pursuant to I.C. 13-26-5-2(4)(B)(i); to provide for resolutions concerning "[a]ny lawful subject necessary to the operation of the district and the exercise of the power granted," pursuant to I.C. 13-26-5-3(a)(3); and adopt and enforce rules "[t]o accomplish the purpose of a district" and [t]o secure the best results from the construction, operation, and maintenance of works, improvements, and properties," pursuant to I.C. 13-26-5-4; and

WHEREAS, the District frequently encounters situations in which it is obligated by law to collect unpaid charges through various legal mechanisms; and

WHEREAS, the Board of Trustees has recognized that it will be fair, efficient, and economical to handle the collection of unpaid charges in particular types of legal situations by establishing a policy and procedures for the collection of said charges by the District staff and the District's attorney;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE LAKELAND REGIONAL SEWER DISTRICT, AS FOLLOWS:

POLICY: As matters of fairness and law, the District is obligated to collect from the owners of real property receiving sewer service or that is to receive sewer service charges that have not been paid. As a matter of good governance, the District is also obligated to act efficiently and economically in any of its undertakings. In light of both obligations, it shall be the policy of the District to collect unpaid charges to the extent possible by the most efficient, economical, and lawful means.

PROCEDURES: In order to carry out the policy identified above, the Board of Trustees of the District hereby establishes the following procedures and practices:

PROCEDURE I

UNPAID MONTHLY CHARGES

In order to collect unpaid monthly charges, the person or entity charged with the administrative management of the District and/or his, her, or its designee is hereby authorized to:

1. Add to each monthly charge the penalty or penalties set out in the rate ordinance for the service area where the property that is at issue is located.
2. As often as he, she, or it shall deem it necessary and lawful and according to the procedures and requirements stated by statute, assert a lien against the real property of the owner who has not paid the monthly charges or any other lawful charges.
3. Monitor the status of any sewer lien that has been asserted to ensure that the amount claimed has been paid and when the District will receive the sum it is owed, that the lien has been released when appropriate, that the lien amount has been added to the property owner's property tax bill, and/or that the property against which the lien has been asserted has been put on the list of properties to be sold at tax sale.
4. In consultation with the District's attorney and only with the authorization of the District Board of Trustees, file a lawsuit against a property owner who has not paid monthly charges in the small claims court of the county where the owner's real property is located.
5. When considering the filing of a lawsuit, take into account the following factors, including, but not limited to:
 - a. Costs in terms of both money and staff time to obtain and collect on a judgment in favor of the District;
 - b. The likelihood of being awarded a judgment in favor of the District;
 - c. The likelihood of being able to collect on a judgment in favor of the District, employing factors such as whether the likely judgment debtor is employed, whether the likely judgment debtor has a bank account with funds sufficient to pay a judgment, whether the likely judgment debtor is already being garnished, or whether the likely judgment debtor has other debts that would interfere with the payment of the judgment;
 - d. Whether the lien against the likely judgment debtor's property that would result from a judgment in favor of the District would motivate the likely judgment debtor to pay the judgment.
6. In consultation with the District's attorney as necessary, pursue all lawful means of collecting any judgment that may be awarded to the District as a result of a lawsuit, including, but not limited to, periodic proceedings supplemental and garnishment. However, the person or entity charged with the administrative management of the District

may not seek to foreclose on a judgment lien without prior approval to do so by the District Board of Trustees.

7. Consult with the District's attorney and seek the advice and/or authority of the District Board of Trustees in matters or issues not addressed by these procedures and practices.

PROCEDURE II

BANKRUPTCIES

In the event the person or entity charged with the administrative management of the District and/or his, her, or its designee shall become aware that a person who owes unpaid charges has filed a petition in bankruptcy, he, she, or it shall:

1. Immediately cease to make any effort to collect the unpaid charges.
2. Immediately notify the District's attorney and provide him or her with copies of any orders or other bankruptcy court documents that may have been received.
3. Adjust and/or reassign the account or accounts pertaining to the property in bankruptcy in a manner acceptable to the Indiana State Board of Accounts.
4. Resume charging and efforts to collect unpaid charges upon notification from the bankruptcy court that the case has closed or the bankruptcy stay has been lifted.

The District's attorney shall:

1. Upon notification of the bankruptcy filing by the person or entity charged with the administrative management of the District, confirm that the proceeding has been filed and its status and advise the person or entity charged with the administrative management of the District as necessary on compliance with the requirements of the bankruptcy court.
2. In the event that claims against the bankruptcy estate are solicited by the bankruptcy court, obtain the authority of the District Board of Trustees to submit a claim on behalf of the District or to waive the submission of claim.
3. Monitor the progress of the bankruptcy case and advise the person or entity charged with the administrative management of the District and/or the District Board of Trustees of the case status as necessary until the case has closed or the bankruptcy stay has been lifted.

PROCEDURE III

MORTGAGE OR OTHER TYPE OF FORECLOSURE

In the event the District is served with a summons and/or a complaint identifying the District as a defendant in a foreclosure action, the person or entity charged with the administrative management of the District and/or his, her, or its designee is authorized to:

1. Immediately notify the District's attorney that service of process has occurred and provide him or her with copies of the documents received.
2. Immediately provide the District's attorney with copies of any liens that have been asserted against the property at issue and identify the total amount of the unpaid charges and penalties that have not been secured by a lien.
3. Continue to assert liens against the property in question as often or as necessary to ensure that the District will be able to recover as much of the amount it is owed as is legally possible.
4. Update the District's attorney as to any additional amounts liened or charged as necessary.

In the event the District is served with a summons and/or a complaint identifying the District as a defendant in a foreclosure action, the District's attorney is authorized to:

1. Enter an appearance on behalf of the District and file a motion for extension of time in which to answer the complaint.
2. During the extended period for responding to the complaint, advise the plaintiff's attorney in writing of the District's legal position that its liens are superior to all liens but tax liens and ask to discuss compromise.
3. Negotiate with the plaintiff's attorney for an agreement that would require the plaintiff either to pay the amounts owed to the District in full or to put the District ahead of all other creditors in priority of payment should the property in question be sold.
4. Answer the complaint as necessary.
5. Monitor the progress of the case and periodically report its status to the person or entity charged with the administrative management of the District and/or the District Board of Trustees.
6. Seek additional authority to act from the District Board of Trustees if the cost to handle the case will exceed two hours charged at the attorney's usual hourly rate or the total amount owed to the District, whichever is less.

PROCEDURE IV

TAX SALES

In the event a property against which a sewer lien has been asserted is sold at a tax sale, the person or entity charged with the administrative management of the District and/or his, her, or its designee has authority to:

1. Receive from the buyer or his, her, or its designee each written notice as required by law.
2. Immediately upon receipt of the notice, advise the District's attorney of its receipt and provide him or her with copies of any and all documents received.
3. Determine from discussion with personnel in the office of the auditor of the county in which the subject property is located which liened amounts were included in the minimum purchase price and how much the District may expect to receive in the event the property is redeemed.
4. Subject to the following, continue to assert liens against the subject property as often or as necessary to ensure that the District will be able to recover as much of the amount it is owed as is legally possible. The last lien should be filed no later than the day before the purchaser has told the District he or she intends to petition the court for an order that a tax deed be issued.
 - a. If the subject property is not connected and is at the time of the tax sale subject to failure to connect penalties, the person or entity charged with the administrative management of the District and/or his, her, or its designee shall continue to assess such penalties but suspend filing liens for failure to connect penalties against the subject property until the date which the subject property is redeemed or ninety (90) days following the issuance of the tax deed, whichever is later.
 - b. If the subject property is not connected and is at the time of the tax sale subject to failure to connect penalties—and a surplus bid is made at the time of the tax sale—the person or entity charged with the administrative management of the District and/or his, her, or its designee shall advise the District's Board of Trustees that a surplus bid amount exists, and discuss with the District's Board of Trustees whether the District's position on filing a lien to perfect its liens rights in any material surplus amount, and obtain authority from the District's Board of Trustees to do so.
5. Monitor with personnel in the office of the auditor of the county in which the subject property is located the status of the property that has been sold to determine whether it has been redeemed, whether a tax deed has been issued and, if so, when and to whom, and when the District may expect to receive its share of the amount paid for the subject property.
6. At the appropriate time and in accordance with procedures acceptable to the Indiana State Board of Accounts, take the actions required by the State Board of Accounts and Indiana

statute to write off any unrecoverable amounts, including, but not limited to, obtaining from the District's Board of Trustees authority to do so.

7. Begin charging the new owner of the subject property as soon as a tax deed has been recorded.

In the event a property against which a sewer lien has been asserted is sold at a tax sale, the District's attorney has authority to:

1. Advise the District's Board of Trustees that a property has been sold and seek from the Board its position with regard to the subject property.
2. Upon receipt of the notice that a property has been sold at tax sale, contact the purchaser or his, her, or its attorney to see whether purchaser will voluntarily pay all of the unpaid, secured or unsecured charges at the time of redemption or before issuance of a tax deed, and if the subject property is subject to failure to connect penalties, inform the purchaser or his, her, or its attorney of the District's policy and procedures hereunder with regard waiver of such failure to connect penalties.
3. If the purchaser will not so agree, obtain from the District Board of Trustees authority to submit a written objection to any petition for an order to issue tax deed unless all unpaid sums are first paid in full.

In the event a property against which a sewer lien has been asserted is sold at a tax sale, and a tax deed is issued, the District's Board of Trustees shall waive all failure to connect penalties assessed against the subject property which remain unpaid and which are not otherwise released by operation of law, if the owner of the subject property either:

1. Makes a request for a Partial Rate Elimination or Elimination of Charges wherein:
 - a. Such request is properly made to the District not more than ninety (90) days following the issuance of the tax deed; and
 - b. The owner of the subject property is approved for said Partial Rate Elimination or Elimination of Charges by the District;

OR

2. The owner connects the subject property to the District's sewage works not more than ninety (90) days following the issuance of the tax deed, provides proof of the same in a manner satisfactory to the District, and formally requests the District waive all failure to connect penalties assessed against the subject property which remain unpaid.

PROCEDURE V

UNSOLD TAX SALE PROPERTIES PRIOR TO SALE OF TAX SALE CERTIFICATE

In the event a property against which a sewer lien has been asserted is unsold at a tax sale, and prior to the sale of a tax sale certificate by county officials in the county where the property is located, the District shall not release any lien that would not be otherwise released by operation of law.

In the event a property against which a sewer lien has been asserted is unsold at a tax sale, and prior to any subsequent sale of a tax sale certificate by county officials (generally the Commissioners) in the county where the property is located, the person or entity charged with the administrative management of the District and/or his, her, or its designee has authority to determine from discussion with personnel in the office of the county officials who hold the tax sale certificate, whether the county officials are willing assign the certificate to the District pursuant to Ind. Code 6-1.1-24-9(d), and report the same to the District's Board of Trustees.

In the event a property against which a sewer lien has been asserted is unsold at a tax sale, and the county officials are willing assign the certificate to the District pursuant to Ind. Code 6-1.1-24-9(d), the District's Board of Trustees shall discuss at either a regular or special meeting whether they are willing to accept such assignment and on what terms. If the District's Board of Trustees decide to accept the assignment of the certificate, it shall adopt a resolution pursuant to Ind. Code 36-1-11-8 together or separately with the county officials memorializing the terms and conditions agreed upon by the District and the County officials for the assignment of the tax certificate.

PROCEDURE VI

SALE OF TAX SALE CERTIFICATE

In the event a property against which a sewer lien has been asserted is unsold at a tax sale, and in the event of the subsequent sale of a tax sale certificate by county officials in the county where the property is located, and a tax (or Commissioner's) deed for the subject property is issued, the District shall not release any lien that would not be otherwise released by operation of law.

In the event a property against which a sewer lien has been asserted is unsold at a tax sale, and in the event of the subsequent sale of a tax sale certificate by county officials (generally the Commissioners) in the county where the property is located, the person or entity charged with the administrative management of the District and/or his, her, or its designee has authority to:

1. Receive from the buyer or his, her, or its designee each written notice as required by law.
2. Immediately upon receipt of the notice, advise the District's attorney of its receipt and provide him or her with copies of any and all documents received.

3. Determine from discussion with personnel in the office of the auditor of the county in which the subject property is located which liened amounts were included in the minimum purchase price and how much, if any, the District may expect to receive in the event the property is conveyed by tax (or Commissioner's) deed.
4. Subject to the following, continue to assert liens against the subject property as often or as necessary to ensure that the District will be able to recover as much of the amount it is owed as is legally possible.
 - a. If the subject property is not connected and is at the time of the sale of the tax sale certificate subject to failure to connect penalties, the person or entity charged with the administrative management of the District and/or his, her, or its designee shall continue to assess such penalties but suspend filing liens for failure to connect penalties against the subject property until the date which the subject property is redeemed or ninety (90) days following the issuance of the tax (or Commissioner's) deed, whichever is later.
5. Monitor with personnel in the office of the auditor of the county in which the subject property is located the status of the property that has been sold by certificate to determine whether it has been redeemed, whether a tax (or Commissioner's) deed has been issued and, if so, when and to whom, and when the District may expect to receive its share of the amount paid for the subject property.
6. At the appropriate time and in accordance with usually acceptable procedures, take the actions required by the State Board of Accounts and Indiana statute to write off any unrecoverable amounts, including, but not limited to, obtaining from the District's Board of Trustees authority to do so.
7. Begin charging the new owner of the subject property as soon as a tax (or Commissioner's) deed has been recorded.

In the event a property against which a sewer lien has been asserted is unsold at a tax sale, and in the event of the subsequent sale of a tax sale certificate by county officials (generally the Commissioners) in the county where the property is located, the District's attorney has authority to:

1. Advise the District's Board of Trustees that a property has been sold and seek from the Board its position with regard to the subject property.
2. Upon receipt of the notice that a certificate has been sold, contact the purchaser or his, her, or its attorney to see whether purchaser will voluntarily pay all of the unpaid, secured or unsecured charges at the time of redemption or before issuance of a tax (or Commissioner's) deed, and if the subject property is subject to failure to connect penalties, inform the purchaser or his, her, or its attorney of the District's policy and procedures hereunder with regard waiver of such failure to connect penalties.

3. If the purchaser will not so agree, obtain from the District Board of Trustees authority to submit a written objection to any petition for an order to issue tax deed unless all unpaid sums are first paid in full.

In the event a property against which a sewer lien has been asserted is unsold at a tax sale, and in the event of the subsequent sale of a tax sale certificate, and a tax (or Commissioner's) deed is issued, the District's Board of Trustees shall waive all failure to connect penalties assessed against the subject property which remain unpaid and which are not otherwise released by operation of law, if the owner of the subject property either:

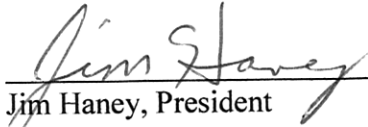
1. Makes a request for a Partial Rate Elimination or Elimination of Charges wherein:
 - a. Such request is properly made to the District not more than ninety (90) days following the issuance of the tax (or Commissioner's) deed; and
 - b. The owner of the subject property is approved for said Partial Rate Elimination or Elimination of Charges by the District;

OR

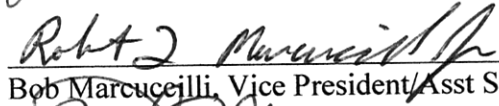
2. The owner connects the subject property to the District's sewage works not more than ninety (90) days following the issuance of the tax (or Commissioner's) deed, provides proof of the same in a manner satisfactory to the District, and formally requests the District waive all failure to connect penalties assessed against the subject property which remain unpaid

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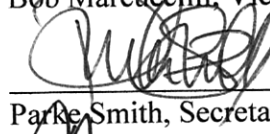
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2020.



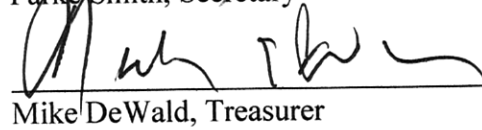
Jim Haney, President



Bob Marcuceilli, Vice President/Asst Secretary

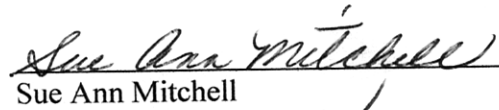


Parke Smith, Secretary

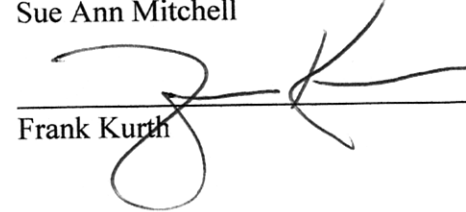


Mike DeWald, Treasurer

Joe Cleland



Sue Ann Mitchell



Frank Kurth

ATTEST: 