

Key Largo Wastewater Treatment District Board of Commissioners Meeting Minutes

4:00 PM Wednesday, May 28, 2003

Key Largo Civic Club

209 Ocean Bay Drive

Key Largo, Monroe County, Florida

Board Members Present

Chairman Andrew Tobin
Commissioner Gary Bauman
Commissioner Cris Beaty
Commissioner Charles Brooks
Commissioner Jerry Wilkinson

Staff Present

Robert Sheets, General Manager, Government Services Group, Inc.
Amy Dukes, Esq., Legal Counsel, Lewis, Longman and Walker, P.A. (via telephone)
Faith Doyle, KLWTD Board Clerk

Guests Present

Charles Fishburn, Gartek Engineering
Michael Longenecker, Key Largo Resident
Tim Bergin, Key Largo Resident

A. Call to Order

Chairman Tobin called the meeting to order at 4:00 p.m.

B. Pledge of Allegiance

The Pledge of Allegiance was recited.

C. Additions, Deletions or Corrections to the Agenda

Mr. Sheets requested the addition of an update on the schedule for the CCNA for consulting engineers to the General Manger Items.

D. Action Items

1. Approval of Resolution KLWTD 2003-15 a resolution of the Key Largo Wastewater Treatment District evidencing its consent to the inclusion of the unincorporated areas of the Key Largo Wastewater Treatment District within the boundaries of the Key Largo Wastewater Treatment District Municipal Service Taxing Unit

Chairman Tobin brought the item to the floor for discussion. Commissioner Wilkinson asked what the amount of the MSTU would be. Mr. Sheets stated that per the TRIM Statute the tax collector must be notified of the amount. However, it need not be set until the budget process is completed. Ms. Dukes noted that the Monroe County ordinance number referenced in the resolution was not available presently and requested that it be inserted into the body of the resolution once it was obtained.

COMMISSIONER BAUMAN MOTIONED TO APPROVE THE RESOLUTION WITH THE ADDITION OF THE MONROE COUNTY ORIDNANCE NUMBER. COMMISSIONER WILKINSON SECONDED. CHAIRMAN TOBIN CALLED FOR A ROLL CALL VOTE.

COMMISSIONER BAUMAN	YES
COMMISSIONER BEATY	YES
COMMISSIONER BROOKS	YES
COMMISSIONER WILKINSON	YES
CHAIRMAN TOBIN	YES

ALL WERE IN FAVOR AND THE MOTION WAS UNANIMOUSLY APPROVED.

2. Approval of the Monroe County/Key Largo Wastewater Treatment District Loan Agreement

Mr. Robert Sheets stated that at the Board's direction he and Commissioner Brooks met with the County and as a result there was a proposal offered by the County in terms of a concept for the amendment to the Interlocal Agreement. Mr. Sheet had forwarded a memo briefing the Board on what the County would prepare. Mr. Sheets stated that as he reads it the Agreement follows fairly closely to the memo except the statement of the forgiveness language. The County gave an additional two years and the term of 10 years doesn't begin until 2008 and that repayment would include no interest and the funds would go into a reserve account and would be used for future wastewater projects per the Interlocal Agreement. Mr. Sheets stated that it appears to be consistent with what the Board wanted, short of the amount being forgiven. Mr. Sheets stated that it would not be presented to the BOCC until the KLWTD has considered it. Commissioner Wilkinson commented that as a grant/loan it is an oxymoron and that it is inconsistent and it sets a bad precedent for any entity who is making a matching grant considers it a loan even if repayment is without interest. Commissioner Wilkinson is against it on principle and would not vote in favor of the concept. Commissioner Bauman believes the clause should be added stating that there would be a possibility of forgiveness in the future. Commissioner Beaty quoted from Section 3B and asked if another Interlocal Agreement would need to be written for each project. Mr. Sheets stated that an Interlocal Agreement would be required for each project and another Interlocal would be required for revisiting the terms of payment back to the County. Chairman Tobin requested that an update on the drafts and that the previous drafts be provided so that they can be reviewed in whole. Chairman Tobin stated he was not happy with the language and wants it expanded to include that the County shall return the funds to the District for wastewater projects. Chairman Tobin requested that Section 3B be reworked and asked Ms. Dukes to provide stronger affirmative language. Mr. Sheets stated that he believes that after today it would be the County's best and final offer and he noted that the 90 days to respond expired on May 19. Chairman Tobin stated that for the Board's purposes the General Manager should provide a recommendation. Mr. Sheets stated that he would prepare a redraft of the memorandum along with a recommendation and he would work with Ms. Dukes on the redraft. The item was tabled until next week.

Chairman Tobin requested that his payroll be deferred so that the payment pending list could be paid.

Mr. Sheets stated that the list is inclusive and asked if the Board was prepared to review Gartek's additional payment request. Mr. Sheets reviewed the list as provided.

3. Approval of the Pending Payments list prepared May 22, 2003

Mr. Sheets stated that once reimbursement for KLTV expenses are received from the County the financial picture would improve. Commissioner Bauman asked how often budget updates would be provided. Mr. Sheets stated that customarily it would be provided the last meeting of the month line item by line item.

COMMISSIONER BEATY MADE A MOTION TO APPROVE THE MAY 22, 2003 PENDING PAYMENTS LIST. COMMISSIONER BAUMAN SECONDED THE MOTION. ALL WERE IN FAVOR. THE MOTION WAS APPROVED UNANIMOUSLY.

Commissioner Beaty asked if reimbursement to the Civic Club for using the facilities had been considered. Commissioner Brooks stated that he had not attended the last Civic Club Board meeting but would report in future.

Mr. Sheets brought the Gartek additional services invoice to the floor noting that he had received the final invoice that included a negotiated price last Wednesday. It is not included on the current list because it missed the cut off. Mr. Sheets stated that the Board could add it to today's agenda, if they wish it to be paid. Mr. Sheets stated that the Board had amended the Gartek Agreement by increasing the original amount to \$25,000. However, there is still the \$22,000 additional services invoice, which was reduced by \$5,000 from the original \$27,000 requested. Mr. Sheets stated that there are several options for the Board. The manger was directed to review the invoice line by line with Gartek or another option is to have the manager and Gartek negotiate a settlement offer to present to the Board. Mr. Sheets prefers the second option. He believes that it gives both sides a chance to compromise. Mr. Sheets noted that the \$6,000 for contract negotiation assistance was approved on the amendment and can be added to the payables. Mr. Beaty asked about the additional payment and the legal ramifications. Mr. Sheets recounted the retroactive emergency issue and if the Board could authorize the payment of the \$22,000 additional services. The general manager cannot pay the invoice unless specifically directed by a vote of the Board. Commissioner Beaty believes that if it was the advice of legal counsel that KLWTD not pay the invoice the manager should not go through the effort and it is a moot point to act on this against legal council's recommendation.

Chairman Tobin reiterated the history of the issue. Discussion ensued about the penalty provision of the statute and the ramifications thereof. Commissioner Beaty stated that if an avenue to pay the invoice exists it should be done if after review it cannot be defined as a retroactive emergency no more time should be invested. Commissioner Wilkinson asked if a legal opinion was given on a retroactive emergency. Commissioner Bauman stated that legal counsel reported that case law to support a retroactive emergency could not be found, but the Board voted to have a retroactive emergency none-the-less. Chairman Tobin stated that the Gartek Amendment was changed by a motion made by Commissioner Brooks that changing the intent to a retroactive emergency the vote was three in favor to declare a retroactive emergency. Chairman Tobin stated that the Board must decide if the whole \$22,000 additional services invoice fits within the retroactive emergency. Commissioner Brooks stated that the manager is requesting direction from the Board to pay the full amount

invoiced or direction to contact Gartek to see if a negotiated settlement could be done. Commissioner Brooks suggested negotiating the amount of money and he believes the issue is that the KLWTD Board feels responsible to pay but aren't sure of the amount. Commissioner Brooks suggested to management that the issue be resolved prior to the selection of the CCNA Engineers so there is a clean slate for all submitters.

COMMISSIONER BROOKS MOTIONED TO DIRECT THE MANAGER TO MEET WITH GARTEK TO NEGOTIATE THE \$22,000 INVOICE FOR FINAL SETTLEMENT AND REPORT THE RESULTS TO THE BOARD. COMMISSIONER BEATY SECONDED THE MOTION. COMMISSIONER WILKINSON BELIEVED THAT MR. MILES HAD BEEN INSTRUCTED TO WORK WITH GARTEK. MR. SHEETS STATED THAT MR. MILES WAS TO REVIEW THE INVOICE, THIS IS A DIFFERENT EXERCISE, AND IF THE BOARD INSISTS GOING THROUGH THE INVOICE LINE BY LINE IT WOULD BE A TENUOUS TASK. COMMISSIONER BROOKS ASKED IF THE MOTION SHOULD BE RESTATED TO ATTEMPT NEGOTIATIONS AND IF THEY FAIL WHAT ACTION WOULD FOLLOW. MR. SHEETS STATED THAT HE WOULD CARRY OUT THE FIRST DIRECTIVE AND REVIEW THE INVOICE LINE BY LINE. MR. SHEETS BELIEVES IT IS IMPORTANT BOTH SIDES BE FAIR AND REASONABLE. COMMISSIONER BROOKS STATED THAT SINCE GARTEK WAS PRESENT THEY BE ASKED FOR INPUT WITHOUT STATING ANY NUMBERS. MR. ROBERT BETANCOURT OF GARTEK STATED THAT THE INFORMATION WAS SENT TWO MEETINGS AGO AS REQUESTED DETAILING ALL HOURS SPENT AND THAT HE IS WILLING TO DISCUSS A NEGOTIATED AMOUNT, BUT HE HAS REDUCED THE INVOICE AND TOOK OUT ISLAMORADA TIME AND DOUBLE ATTENDANCE AT MEETINGS. CHAIRMAN TOBIN COMMENTED THAT IT IS UNFORTUNATE THAT GARTEK IS THE FIRST VENDOR TO CONTRACT WITH THE DISTRICT AND THE DIFFICULTIES THAT HAVE ARISEN AND CHAIRMAN TOBIN HAS RESPECT FOR THE WORK DONE BY GARTEK. CHAIRMAN TOBIN BELIEVES THAT NO RETROACTIVE EMERGENCY IS POSSIBLE BUT THE INVOICE WILL BE REVIEWED IN THE CONTEXT OF A EMERGENCY. CHAIRMAN TOBIN SUGGESTED TO GARTEK THAT ONE-WORD DISCRPTION ON INVOICES ARE INSUFFICIENT. MR. BETANCOURT STATED THAT FOR EACH MEETING INVOICED THERE ARE MINUTES ON FILE AND COULD BE PROVIDED TO MR. SHEETS. CHAIRMAN TOBIN STATED THE MOTION ON THE FLOOR WAS TO DIRECT THE MANAGER AND GARTEK TO REVIEW THE INVOICE TO CONSIDER WHAT WOULD BE CONSIDERED EMERGENCY WORK AND TO BRING A NEGOTIATED FINAL AMOUNT TO THE BOARD FOR CONSIDERATION. CHAIRMAN TOBIN REQUESTED A ROLL CALL VOTE.

COMMISSIONER BAUMAN	NO
COMMISSIONER BEATY	YES
COMMISSIONER BROOKS	YES
COMMISSIONER WILKINSON	YES
CHAIRMAN TOBIN	YES

THE MOTION CARRIED.

E. General Manager's Report

- 1. Status Report/Discussion regarding Amendment No. 2 to the State Financial Assistance Agreement between KLWTD and FDEP**

Mr. Sheets stated that the document had been received at 3:00 p.m. May 27, 2003 and the cover letter stated that it must be returned executed by June 14 or the funds would be

relinquished and re-appropriated. The FDEP director had executed the agreement and it identifies the \$1.66 million appropriation and the additional re-allocation to the District of \$134,822 and \$52,490. Mr. Sheets stated that the document reaffirms that the money is to be spent on the KLP Project. Mr. Sheets stated that the document is consistent to what has previously been stated by the FDEP. Mr. Sheets stated that he had reviewed the attachments and the documents can be revised for any future contract changes, scope changes and for any other developments that benefit the KLWTD. Schedule C has been revised and reviewed and some specific items such as right-of-ways and easements may need adjustment. Item 3 gives the Board time for initial design to begin by 8/15. Mr. Sheets stated that the dates in the schedule provide the Board ample latitude to determine if they are realistic and to inform the FDEP if changes are required. Mr. Sheets stated that the Amendment does not need to be acted on today. Mr. Sheets suggested it be added as an action item on the June 4, 2003 agenda so the Board has time to review the balance of the document.

Chairman Tobin suggested an internal schedule be produced to identify what the Board will need to accomplish over the next three months. Chairman Tobin requested sealed copies of the KLP surveys from the engineer to keep with the KLWTD official records.

Chairman Tobin asked for an update on the Engineering CCNA and how it falls in with the project schedules. Mr. Sheets stated that 13 submittals had been received and that Commissioner Bauman had offered assistance and is on the evaluation committee. Mr. Sheets stated that the Board had directed him to place a licensed engineer on the committee. Mr. Sheets presented a resume for Mr. Gary Fries to the Board and stated that Mr. Fries was not affiliated with any of the submitter. Mr. Sheets hopes to present the final rankings to the Board on June 11, 2003 along with a recommendation. At that time the Board could direct the manager as to which firms would be scheduled for presentations at the June 18, 2003 meeting. Mr. Sheets added that the most critical need is for an engineer of record for the two current projects. Mr. Sheets stated that KLP is not as pressing a time issue but once the KLTV agreement is executed the first order of business is to design the project and it is imperative that the KLWTD have an engineer of record due to the design phase. If the Board makes their decision on awarding the KLTV contract by 6/11 or 6/18 then the notice to proceed would be issued within 30 days making it the end of July before the design phase begins. The Board would need to select an engineer of record prior to this. Chairman Tobin asked if any other action was imperative within the next 90 days. Mr. Sheets stated that several forms are to be forwarded to the FDEP and need to be signed off by the engineer of record and general manager. The project budgets need to be reviewed by the manager and engineer showing how the dollars are to be spent.

Discussion ensued on the Engineering CCNA process. Commissioner Bauman stated that he is not familiar with any of the firms and needs to read all the submittals completely to find out what he needs to know for the evaluation. Commissioner Wilkinson asked if there was anything wrong with having all the submitters available to select from when engineering needs arise. Mr. Sheets anticipates the Board wanting to have more than one engineer retained from the CCNA process but 13 are not needed. Mr. Sheets suggested one for the present projects, one for future planning studies and one general engineer. Commissioner Wilkinson asked if there was a time frame to use the list of those selected. Mr. Sheets stated that the industry standard is 3 years but it can be as long as the Board wishes. Chairman Tobin asked if the Board selects several firms and doesn't like them could more be selected from the list generated from this CCNA process. Mr. Sheets stated that the process would need to be done again. Discussion ensued on the process and the engineering expertise needed. Chairman Tobin asked if the ranking process would benefit

the selection. Mr. Sheets stated that it would identify the stronger candidates and that the Board could select as many as could be justified. Commissioner Bauman stated that he believed engineering would be needed for master planning, construction and several other specialties. Commissioner Bauman stated that during his review of the submittals many of the questions were answered and he offered his S.O.Q. copies to Commissioner Wilkinson for review. Commissioner Brooks asked if the contract to be signed with the engineers could include that the contract would be renewable. Ms. Dukes stated that a renewable clause to avoid another CCNA process is possible but she will confirm this and report back to the Board. Commissioner Wilkinson stated that the FKAA retains seven engineers for flexibility.

Mr. Sheets stated that Mr. Feldman of the FKAA is prepared to enter into the M.O.U. in reference to reimbursements from FDEP loan agreement Phase 1 funds with an answer to one issue. Mr. Feldman believes that any audit exceptions should be the responsibility of the KLWTD. Mr. Sheets understands the concerns of the FKAA. They do not want to manage this agreement and they want the KLWTD to be reimbursed for cost but they don't want to be exposed. Chairman Tobin believes it is not necessary to have a third party involved and if FKAA is a pass through agency an M.O.U. is not necessary. Mr. Sheets stated that this is his first discussion with Bob Feldman and he and Ms. Dukes would talk with him again to see if they could alleviate his concerns.

Mr. Sheets informed the Board that four responses were received for the auditor request for proposals. There was one local firm and three other firms located in South Florida. Mr. Sheets informed the Board that auditors were contacted for submittals but were told that KLWTD was too small a job for them to consider. Mr. Sheets stated that the Board could reject all submittals received and conduct a review as to why other municipal auditors did not respond. The local firm that responded had no governmental experience. Discussion ensued on other firms that were contacted and why they decided not to respond. It was suggested that the committee review the submittals prior to deciding the next step.

2. Status Report/Discussion regarding the KLP contract with D.N. Higgins

Mr. Sheets stated that legal counsel would meet with Chairman Tobin and then they would hold a final meeting with Higgins for fine-tuning before placing the agreement on the June 4 agenda for action. Chairman Tobin stated that meetings were scheduled for Friday and Monday in the West Palm Beach office of Lewis, Longman and Walker.

3. Status Report/Discussion regarding the KLTV contract with The Haskell Corporation

Mr. Sheets stated that legal counsel would meet with Chairman Tobin and then they would hold a final meeting with Haskell to address various concerns before placing the agreement on the June 4 agenda for action. Chairman Tobin stated that meetings were scheduled for Friday and Monday in the West Palm Beach office of Lewis, Longman and Walker.

F. Legal Counsel's Report

Ms. Dukes stated that she has signed the Amendment to the Gartek Agreement and forwarded it for execution by Gartek and the Chair.

Ms. Dukes informed the Board that KLWTD Resolution 2003-15 requires the Monroe County Ordinance number to be inserted prior to the Chair executing it. Chairman Tobin stated that he would sign the document and then the County ordinance number could be filled in.

Ms. Dukes stated that she had received the County's Loan Agreement and has reviewed it and as directed by the Board she will discuss the requested changes with the manager.

G. Engineer's Report

No engineering report was presented.

H. Commissioner's Items

Commissioner Beaty requested that a higher quality speakerphone be purchased for the KLWTD. Mr. Sheets stated that there was money in the budget for equipment purchases. The Clerk was directed to select a phone with an amplified speaker and sensitive microphones.

Chairman Tobin informed the Board that Mr. David Ritz from Ocean Reef contacted him concerning his unhappiness with the vacuum system. Mr. Ritz is the head of Ocean Reef's homeowner's association and they are having difficulties with their Airvac, Boyle designed system. Commissioner Wilkinson confirmed that he has heard the same comments. Chairman Tobin believes these comments cannot be ignored. Chairman Tobin believes one item in the contract to be discussed is the warranty and its length. Discussion ensued. Commissioner Wilkinson as head of the technical advisory committee believes he should explore these concerns. Commissioner Brooks stated that his understanding of the warranty for the Haskell contract has a two year warranty with their vendor and it would pass on to the District. Chairman Tobin stated that it is not directly addressed in the contract and he would like more details on the point in light of the Ocean Reef difficulties. Mr. Sheets asked if Mr. Ritz and the homeowners association was the head entity in Ocean Reef. Chairman Tobin stated that it was. Mr. Sheets requested to participate with Commissioner Wilkinson during his discussion with Mr. Ritz. Discussion ensued on the particulars of the Ocean Reef system and their issues.

Chairman Tobin asked for public comment.

Mr. Charles Fishburn stated that Roovac has a better warranty and that Airvac has problems with controllers and should be reviewed.

Mr. Tim Bergin stated that he takes vigorous exception to Mr. Fishburn's comments, and in his opinion the problems in Ocean Reef are due to the start up of the system with no control of where the inputs were located. Mr. Bergin stated that he strongly suggests not accepting a system until 75-80% of homes are hooked in. Mr. Bergin stated that a lot of air is needed for energy and this one thing was not done at Ocean Reef. Discussion ensued on the specifics of testing the system and acceptance of the system. Chairman Tobin asked if the contract was clear on these points. Mr. Sheets stated that the section would be reviewed.

Mr. Bergin stated that after working for an operating agency and fighting through start-ups he feels confident of his views concerning all three systems and he understands how they work. In Mr. Bergin's opinion acceptance of the system itself doesn't matter but until you have roughly 75% of your system hooked up you will have problems because of the amount of energy required in the configurations. Mr. Fishburn stated that changing the evaluation criteria in the RFP could have avoided confusion but the RFP couldn't be changed. Chairman Tobin stated that at the next contract negotiation meeting performance testing be clarified. Commissioner Brooks asked if these issues could be addressed during the value engineering and if you can fine-tune the contract once it is awarded. Mr. Fishburn stated yes that value engineering is a fluid process and fine-tuning could be done. Further discussion ensued. Chairman Tobin stated that these issues and others, like the lack of a cooperation clause would be addressed during the two final contract negotiation meetings that had been scheduled. Commissioner Brooks stated that the Board should keep in mind that the Ocean Reef project was rushed and that the KLWTD should come out better.

K. Meeting Adjournment

Commissioner Brooks motioned to adjourn. Commissioner Beaty seconded the motion. All were in favor. Chairman Tobin adjourned the meeting at 5:50 p.m.