



Key Largo Wastewater Treatment District Board of Commissioner's Meeting Minutes

4:00 PM Wednesday, August 27, 2003

Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, Monroe County, Florida

Board Members Present

Andrew Tobin
Gary Bauman
Cris Beaty
Charles Brooks
Jerry Wilkinson

Staff Present

Charles L. Sweat, Director of Operations
Amy Dukes, Board Attorney (via telephone)
Jeff Weiler, KLWTD Engineer
Faith Doyle, KLWTD Board Clerk

Guests Present

Charles Fishburn

A. Call to Order

Acting Chair Jerry Wilkinson called the meeting to order at 4:04 p.m.

B. Pledge of Allegiance

The pledge was recited.

C. Public Comment

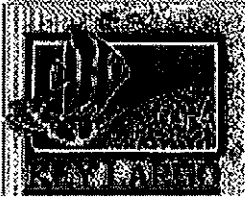
Acting Chair Wilkinson asked if any one present wished to address the Board. There being none the meeting continued.

D. Minutes – Draft July 9, 2003

Commissioner Brooks made a motion to approve the July 9, 2003 meeting minutes. Commissioner Beaty seconded the motion. All were in favor.

E. Additions, Deletions or Corrections to the Agenda

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Key Largo Wastewater Treatment District Board of Commissioners Meeting Minutes

**4:00 PM Wednesday, July 9, 2003
Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, Monroe County, Florida**

COMMISSIONERS 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
Amy Dukes, Legal Counsel, Lewis Longman & Walker, P.A. (via telephone-for the meeting
only)

Faith Doyle, KLWTD Board Clerk

GUESTS PRESENT

Robert E. Burt, Key Largo Resident
Steve Gibbs, Reporter for the Free Press

A. Call to Order

Chairman Andrew Tobin called the meeting to order at 4:05 p.m.

B. Pledge of Allegiance

The Pledge of Allegiance was recited.

C. Budget Workshop

Chairman Tobin requested that Mr. Sheets conduct the workshop. Mr. Sheets stated that discussion regarding several budget items from the previous workshop had been incorporated into the documents presented.

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Mr. Sheets stated that Line 19 "Rents and Leases" was reduced by 50%. It was the consensus of the Board that the amount allocated for rent and leases was greater than necessary and there could be funds left if a local office is not opened before the end of the fiscal year. The Board expressed a desire to have a district facility for meeting with citizens, holding Board meetings and to store copies of the official documents of the District.

Mr. Sheets stated that at the Board's direction the contingency line 23 and line 30 were combined for special projects such as the planning study and customer outreach programs.

Mr. Sheets stated that because of the Board's discussion in reference to professional services fees there was a \$28,000 reduction to legal expenses and that \$12,000 of those funds were reserved for a grant specialist. Mr. Sheets stated that legal expenses thus far have been greater because of the birth of district and that the drafting of initial contracts (professional services, Inter-local Agreement, County Loan Agreement) and resolutions have added to the expense. Mr. Sheets believes these expenses should decrease to \$7-8,000 a month for general legal expenses during FY2004. Mr. Sheets noted that legal issues directly related to the capital projects should come from capital project funds. Chairman Tobin suggested that \$5,000 a month for general legal counsel and a second line item for litigation reserve would be appropriate. Mr. Sheets agreed that a litigation reserve is an option or another option would be to have two lawyers one for general District issues and one as special utility legal counsel for more utility specific needs. Mr. Sheets stated that to revise the budget a consensus must be expressed.

Chairman Tobin asked the other member's view on the issue. Commissioner Bauman agrees that legal fees are too high and asked what Mr. Sheets believes are the legal needs in FY2004 above and beyond the review of routine agendas. Mr. Sheets believes that during FY2004 the affairs of the District should become less intensive and that Chairman Tobin's suggested \$5,000 per month would equate to approximately 30 hours of legal services a month at \$175 per hour, or 15 hours a meeting. Chairman Tobin stated that he believes it is not necessary to have extensive legal review for every agenda item. Commissioner Bauman believes that 15 hours a meeting is sufficient. Mr. Sheets suggested that legal counsel be presented with the option of an agreement with a fixed fee. This would be another option to reduce costs for routine matters and if there are specific issues to be explored it would be at the direction of the Board. Commissioner Beaty stated that \$5,000 a month would be adequate in his opinion for review of the basic items and he would like to see a litigation contingency line item. Commissioner Brooks stated that he had been concerned with legal expenses from the inception of the District and was disturbed when the Inter-local Agreement, which was a County project, became bogged down and the KLWTD accomplished the task and absorbed the expense of approximately \$9,000. Commissioner Brooks believes that having general counsel and utility counsel would be of benefit. Commissioner Brooks would like a local attorney for general work and suggested Lewis, Longman and Walker for specific utility work. Commissioner Brooks has attempted to ascertain specific costs for different tasks by reviewing the current legal expenses. He stated that it is difficult to extrapolate the information. Discussion ensued on the specific amounts to be budgeted for general legal expense and if there should be a legal utility expense line added or a litigation contingency line added. Commissioner Wilkinson stated that he would prefer a local attorney for general

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issues and would like to retain Lewis, Longman and Walker for specific issues. Chairman Tobin directed the Manager to appropriated \$60,000 for general counsel and \$48,000 for litigation reserve.

Chairman Tobin stated that he had brought it to the attention of Ms. Dukes that there is a need for more detailed time entries on legal invoices. Chairman Tobin suggested that all contracts entered into by the District stipulate that all invoices be itemized.

Chairman Tobin directed the Manager to convey these wishes to Lewis, Longman and Walker and that if the itemized billing indicates that the expense is approaching \$5,000 a month and if it is believed that the amount will exceed the budget for the month the Manager should be contacted concerning the overage. The Manager could then prepare a budget adjustment if necessary.

Commissioner Brooks asked if obtaining local legal counsel was on the floor for discussion. Chairman Tobin stated that he believes it is not appropriate to discuss the issue during the workshop but at some point in time it should be discussed. Commissioner Beaty agreed that it should be an issue for a future agenda. Commissioner Beaty asked if a request for qualification (RFQ) is necessary when contracting for legal services. Mr. Sheets stated that an RFQ is not required for legal services, but the issue of seeking other counsel should be for a valid reason, for example, if you are not receiving competent counsel, if you are being billed excessively, or if the workload is so great that additional counsel is required. Mr. Sheets believes this issue is an extremely important discussion item and needs to be thought out completely prior to action being taken. Chairman Tobin does not want to limit discussion but does have concerns with the issue being discussed at the present time. Commissioner Bauman stated that he desires discussing the matter in greater detail but believes it should not be at present. Commissioner Brooks requested that the item be added to a future meeting agenda as a discussion item. Chairman Tobin directed the Clerk to include the item for discussion on the agenda for the second meeting in August.

Mr. Sheets continued with the budget workshop and stated that line 29 was originally budgeted for a rate consultant was reduced to zero because a rate study is not warranted for FY2004. The funds were transferred to line 33 for a grant specialist as requested by the Board. Commissioner Wilkinson asked Mr. Sheets view on the need for a rate consultant. Mr. Sheets stated that the rates have been set for monthly service charges (\$35) and the initial capacity fee (\$2,700) and that until the contract operators come online it cannot be determined if increased rates are required to meet future budgets. The rate study would be necessary at that point.

Commissioner Brooks asked when rules for connection procedures and deposit collections would be enacted. Mr. Sheets stated that these procedures would fall under the mandatory connection procedure. The development of the mandatory connection procedure would be charged and paid for from the connection fees because it is an administrative expense of a capital project. Mr. Sheets stated that because the District is not under Chapter 120 administrative codes the Boards rules, the FKAA rules that were adopted by the KLWTD could

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be used or they could choose to modify them, however there is no budgetary impact for FY2004.

Mr. Sheets noted that if the budget would be approved as discussed today there would be a \$70,000 reserve. The reserve needs to be protected and over the next few years it is critical to have reserves for emergencies. The funds could not be re-appropriated without going through a specific procedure. Commissioner Brooks asked when final approval on the budget would be required and when it would be decided that the .35 MSTU rate would be utilized. Mr. Sheets stated that the budget would need to be approved in September and that the County has the millage of .35 and to reduce it would reduce the reserve. Mr. Sheets stated that a public hearing on the budget is necessary prior to adoption and the public hearing **MUST** be advertised 30 days in advance. Mr. Sheets stated that for the public to have time to review and respond to the budget it was suggested that a public input hearing be held in August. It was the consensus of the Board to have a public input hearing in August. It was suggested that copies of the budget be provided to the Key Largo Federation of Homeowners and the Key Largo Trailer Village Homeowners Association.

Commissioner Bauman requested budget to actual expenditure figures. Mr. Sheets suggested that the Board be provided with a quarterly financial status report. The chief financial officer, David Miles would present the current budget status and identify any shortfalls and recommend budget adjustments if warranted. The Board agreed with the suggestion.

Commissioner Wilkinson asked about the collection costs for the MSTU. Mr. Sheets stated the budget reflects a 95% collection rate for MSTU receivables. The balance of 5% should cover the cost of collection. Commissioner Wilkinson expressed concerned with the cost of collection and the timing of transferring funds from the County to the KLWTD. Mr. Sheets stated that a liquidity analysis to verify funding requirements would be conducted by the CFO and that research is being conducted to establish a line of credit with TIB Bank to cover any cash flow difficulties.

Chairman Tobin questioned line 27 "Management" and the difference between the 2003 amount and 2004 management contract. Chairman Tobin also requested that the general manager keep time records. Mr. Sheets stated that the amount reflects the 3% annual increase as indicated by the management contract that would not be in effect until April 2004. Chairman Tobin would like to see the actual amount of \$129,600, or 12 months x \$10,800, in the budget.

Mr. Sheets stated that a revised budget would be presented at the next meeting prior to the advertisement being placed for the public hearings.

The workshop concluded and Chairman Tobin recessed the meeting at 5:10 p.m.

Chairman Tobin reconvened the meeting at 5:20 p.m.

D. Additions, Deletions or Corrections to the Agenda

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There were no additions, deletions or corrections to the Agenda.

Ms. Amy Dukes joined the meeting via telephone at 5:25 p.m.

E. Action Items

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

Chairman Tobin brought Item E1 to the floor. **COMMISSIONER BROOKS MOTIONED TO APPROVE THE REVISED MONROE COUNTY/KEY LARGO WASTEWATER TREATMENT DISTRICT LOAN AGREEMENT. COMMISSIONER BAUMAN SECONDED THE MOTION. COMMISSIONER WILKINSON WAS NOT IN FAVOR OF THE MOTION AND VOTED NO. ALL OTHER MEMBERS WERE IN FAVOR. THE MOTION WAS APPROVED BY A VOTE OF FOUR TO ONE.**

Legal Counsel Report

Ms. Dukes stated that she has been working on various projects in conjunction with the Manager and CFO since the last meeting including the Standard Professional Consultant Contract, the Auditors Service Contracts and the check writing policy. Chairman Tobin stated that the Standard Professional Consultant Contract was on the agenda and asked Ms. Dukes if it required any additional work. Ms. Dukes stated that it was complete. Ms. Dukes stated that the Auditors Service Contract needed minor changes.

Chairman Tobin informed the Board that as a result of communications with Danny Kolhage, Monroe County Clerk of Courts, concerns were raised in reference to the present KLWTD Expenditure Policy (Resolution 2003-11). The results are covered in a memo drafted by Lewis Longman and Walker. Mr. Kolhage questioned the General Manager's check writing authority. Chairman Tobin noted that the FKAA requires the chairman and one board member's signature on all disbursement checks and noted that law does not mandate this requirement. Mr. Sheets stated that under the current policy funds can't be disbursed without approval by the Board and that the emergency provision gives approval for items under \$1,000 and that any emergency expenditures must be reported to the Board immediately. Mr. Sheets suggested that the Chairman or the Secretary/Treasurer sign the disbursement approval document if one is developed and approved by the Board.

Discussion ensued concerning different expenditure procedures. Mr. Sheets stated that he would present a management recommendation on a procedure. Chairman Tobin suggested that separate procedures be developed for each fund in the future. Ms. Dukes stated that if the procedure changes, there would need to be a new resolution to enact it. Chairman Tobin agrees that a new resolution is required to change the procedure, which would include the suggested disbursement approval document. Chairman Tobin requested that the resolution be drafted and the disbursement approval document. Chairman Tobin stated that Resolution 2003-11 was conditioned on having errors and omissions insurance or wrongful acts coverage and that GSG had not included this specific coverage. Ms. Dukes stated that she would

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amend the resolution once the policy is changed. Chairman Tobin stated that he would like to review Resolution 2003-11 to verify if the changes could be made without Ms. Dukes' assistance.

Commissioner Brooks requested copies of the insurance documents for review that the Chairman had referred to. Chairman Tobin requested the Clerk to distribute copies of the GSG insurance certificates. Commissioner Brooks questioned the authorization of changing the check writing process. Chairman Tobin stated that at present the only action being explored was to have the Chairman and Secretary/Treasurer sign authorizing disbursements. Mr. Sheets suggested that a wrongful act rider be added to the current GSG insurance policy. The Board requested that a copy of the present KLWTD Expenditure Policy (Resolution 2003-11) be forwarded to them.

Chairman Tobin requested that the Auditor Services Contract be distributed to the Board and that it be placed on a future agenda.

Chairman Tobin brought to the floor for discussion the need to explore changing the Board meeting schedule due to conflicts with the Monroe County Planning Commission and County Commissioners meetings. The 2nd and 4th Thursday was suggested. Commissioner Brooks stated that the Civic Club schedule should be checked for availability and that he would take the new dates to the Civic Club Board for consideration on July 22. Commissioner Bauman requested the meetings be held the third Thursday. Commissioner Beaty would prefer Thursday meetings. Chairman Tobin stated that the August meetings are to be kept as scheduled and the switch would take place in September.

Discussion ensued concerning the rescheduling of the July 23 meeting to July 30. Chairman Tobin and Mr. Sheets have conflicts on July 23 and Ms. Dukes has a conflict on July 30. Mr. Sheets stated that the items of importance for the upcoming agenda include the scopes from Weiler Engineering Corporation (WEC) for construction management and the GSG construction administration work authorization. Mr. Sheets suggested that staff and WEC meet with individual Board members on July 21 and 22 on the scope of services so that revisions could be made to the scope so that it could be considered for Board authorization on July 30. Mr. Sheets stated that a formal presentation by WEC would be made on July 30 and that GSG would conduct a general construction management presentation illustrating the difference between A.6 and A.7 services.

Chairman Tobin suggested that Brown and Caldwell as design engineer on the Haskell team have a round table discussion along with WEC and GSG staff to understand what the KLWTD Board expects from project management. Chairman Tobin suggested the discussion be held at the July 30 meeting and that it be video taped in the event that negotiations with WEC fail. Chairman Tobin believes videotape would facilitate the process if the Board proceeds to the next engineering firm.

Discussion ensued on involving Brown and Caldwell in the process prior to WEC being under contract with KLWTD.

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Commissioner Wilkinson asked how contract section E.2 ties into the 'scope of service'. Mr. Sheets stated that the general contract needs to be signed with general terms then a request for a scope of service, which results in a work authorization needs to be approved by the Board. Discussion ensued on redesign of the Park. Mr. Sheets stated that the present cost would include the redesign of the project at a price specified by WEC and that additional engineering work for KLP would require an additional engineer.

Commissioner Bauman asked if Brown and Caldwell were contractually bound to attend KLWTD meetings. Chairman Tobin stated that the cooperation clause in the Haskell contract was requested for this purpose. Ms. Dukes stated that her understanding is that under the cooperation clause, Haskell would need to request that Brown and Caldwell attend as part of the Haskell team. Mr. Sheets suggested that WEC, Haskell and Brown and Caldwell discuss the project management plan prior to the public meeting. Chairman Tobin, Commissioner Bauman and Commissioner Wilkinson agreed with Mr. Sheets' suggestion adding that Higgins also needs to be involved. Mr. Sheets stated that his goal is to educate the Board during this first experience with project management and daily engineering activities. Chairman Tobin believes that the engineering fees are out of hand and need to be controlled. Mr. Sheets stated that he would initiate whatever action the Board requests. Discussion ensued. Commissioner Brooks believes the Board needs to act on a management plan and that when professionals are hired with specific expertise to oversee projects the Board needs to place confidence in them and in the case of WEC, Haskell had enough confidence in them to potentially have them on their team. Commissioner Beaty agrees that after an agreement has been reached with WEC on a scope of service all parties should meet to develop a management plan for the Board's approval. Commissioners Brooks, Beaty, Bauman and Chairman Tobin agreed. Commissioner Wilkinson agreed but has concerns that he believes will be addressed during the meeting with WEC.

COMMISSIONER BROOKS MADE A MOTION TO RESCHEDULE THE JULY 23RD MEETING TO JULY 30TH AT 3:00 P.M. AND TO ADVERTISE THE CHANGE AND TO HAVE WEC MAKE A PRESENTATION ON CONSTRUCTION MANAGEMENT AND GSG MAKE A PRESENTATION ON CONSTRUCTION ADMINISTRATION. COMMISSIONER BEATY SECONDED THE MOTION. ALL WERE IN FAVOR AND THE MOTION WAS UNANIMOUSLY APPROVED.

It was the consensus of the Board that the WEC and GSG presentations, the pending payments and disbursement approval document (revised Resolution 2003-11) be the only items on the July 30, 2003 agenda.

2. Approval of the Standard Contract for Consulting/Professional Services

Chairman Tobin brought the item to the floor for discussion. Mr. Sheets stated that the contract had been approved by virtue of the issuance of the RFP and that this was being presented for ratification. Chairman Tobin believes that due to the potential for requested changes from the engineering firms, the contracts should be considered on an individual basis. Commissioner Brooks stated he has concerns with section 6.A and the several other statements in the contract. It was the consensus of the Board to table the item and to

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consider the individual contracts that are received from the responding top eight engineering firms.

Mr. Sheets informed the Board that the Notice to Proceed (NTP) has been sent to the Haskell Company for the KLTV project. The Clerk was instructed to forward copies to the Board. Chairman Tobin stated concern over the issuance of the NTP being premature. Mr. Sheets stated that it was necessary to trigger an updated Schedule B and a meeting with the DCA to rework the draw down schedule. Discussion ensued on the issuance of the NTP and the ramifications of the action. The Manager and Legal Counsel were directed to review the ramifications and rescind the NTP if necessary. Commissioner Bauman asked what the first task is to be. Mr. Sheets stated that it would be the preliminary design. Commissioner Bauman believes the action was not premature and does not want the preliminary design delayed. Chairman Tobin requested that Mr. Sheets review the situation and to advise the Board of any areas of concern.

Commissioner Bauman asked if there has been any response to the letter that was forwarded to the FDEP. Mr. Sheets noted that no responses have been received.

COMMISSIONER BAUMAN MOTIONED TO APPROVE THE JUNE 25, 2003 MINUTES WITH THE ADDITION OF CHAIRMAN TOBIN'S YES VOTE ON PAGE 9. COMMISSIONER BEATY SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

Mr. Sheets stated that a revised FY2004 Budget would be provided for the Board's review at the July 30 meeting in preparation for advertisement.

Chairman Tobin adjourned the meeting at 6:42 p.m.