



# **Key Largo Wastewater Treatment District**

## **Board of Commissioner's Meeting Minutes**

**5:00 PM Wednesday, February 18, 2004**  
**Key Largo Civic Club, 209 Ocean Bay Drive**  
**Key Largo, Monroe County, Florida**

### **Board Members Present**

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

### **Staff Present**

Robert Sheets  
Charles Sweat  
Thomas Dillon  
David R. Miles  
Ed Castle

### **Guests Present**

William English, The Haskell Company  
Jon Morrison, Florida League of Cities  
Amy Osborne, Key Largo Resident  
Tom Evans, Evans Environmental  
Jill Patterson, Key Largo Resident  
Burke Cannon, Key Largo Resident  
Steve Gibbs, Reporter for the Free Press  
Fred & Ann Nickerson, Key Largo Residents  
Kim Wigington, Key Largo Resident  
Robert E. Burt, Key Largo Resident

#### A. Call to Order

Chairman Bauman called to order at 5:10 p.m.

#### B. Pledge of Allegiance

The Pledge was recited.

#### C. Additions, Deletions or Corrections to the Regular Meeting Agenda

Commissioner Brooks requested that a Resolution concerning sending a letter to the Florida Legislature and the Governor expressing KLWTD's unanimous support for the "Landmark

Monroe County Conservation Proposal" that sets goals for protecting near shore waters and native forests be added for consideration. He explained his and Mayor Nelson's position on the issue. His point of view indicates that KLWTD should voice its opinion on the issue to the Governor. Chairman Bauman and Comm. Tobin objected to the resolution being acted on tonight and placed it as Commissioner's Item K-8 for discussion.

Commissioner Brooks also noted that with the commissioner's items being last they continue to be put off, he is interested in the discussion on Comm. Wilkinson's items K-3 and his item K-4 and suggested they be placed in front of the other commissioner's items.

Comm. Wilkinson's 2-15-04 email concerning an extension to the FEMA grant was added as Item K-9.

D. Minutes – Draft      Draft October 17<sup>th</sup> 2003 and January 14, 2004

**Commissioner Brooks made a motion to approve the October 17, 2003 minutes with the inclusion of Mr. Dillon's suggested changes. Commissioner Wilkinson seconded the motion. Commissioner Tobin abstained from voting because he had not had time to review the minutes. The motion was approved with a vote of four in favor and one abstention.**

The January 14, 2004 minutes were tabled. Chairman Bauman requested they be included on the next meeting agenda.

E. Public Comment

Mr. Robert Burt informed the Board that the KLTV picnic would be held at the west park off Buttonwood at the end of Park Drive on March 27, 2004 at 4:00 p.m. He invited the members to attend.

Ms. Ann Osborn introduced herself as a resident of KLTV and expressed her interest in any administrative secretary/clerk positions that become available with the District. She attended the meeting to observe the work of the Board. Chairman Bauman welcomed her and stated that the transition to local employees is in the future and that once an advertisement for the position is posted the Board would consider all applications submitted.

1. Presentation by the Florida League of Cities on the KLWTD Insurance coverage

Mr. Jon Morrison of the Florida League of Cities presented information on the District's insurance coverage. The General Liability Policy had been forwarded in its entirety to the Board Members.

Mr. Morrison noted that the District has Errors and Omissions Endorsement to cover decisions made by the Board or by individual members and that historically it provides legal counsel to the insured. Any lawsuits filed against the District would have defense counsel provided through the League's approved list. Any cost of investigation (depositions, court reporters, etc.) would be covered and no court cost would be due from the District for a covered litigated claim. The District would need to notify the League of any claims or potential claims. If a summons or complaint is received it must be reviewed by the League to verify if it is covered. Determination is made by the allegations in the complaint.

Commissioner Tobin questioned if the District would be covered while meeting at the Key Largo Civic Club for a slip and falls. Mr. Morrison stated that the Civic Club as a 501.3c would have their own coverage. Discussion ensued on liability issues including defense costs for third party claims, which are not covered, damage during construction activities, which would be covered by the contractor and District representative traveling on District business, which would be covered by workers compensation and the individuals automobile policy.

Commissioner Beaty asked about sewage backups or other negligent acts. Mr. Morrison stated that an investigation would be conducted and that negligence based acts only would be covered and if a lawsuit were filed they would defend them. Negligence scenarios were discussed. Commissioner Wilkinson asked if the insurance would cover a malfunctioning valve. Mr. Morrison stated that the manufacture would be contacted for reimbursement on any claims paid.

Mr. Morrison stated that he would provide standard insurance forms to the clerk in the event any claims were made. Mr. Sheets stated that the District as a governmental entity was protected by sovereign immunity and that for certain claims would not pay more than the coverage limits on claims.

Chairman Bauman thanked Mr. Morrison for the information provided.

#### F. Legal Counsel's Report

Please see below.

#### G. Action Items

1. Approval of Legislative Change to House Bill 471 to 2002-337 Laws of Florida concerning vacancies to the Board

**Commissioner Beaty made a motion to approve the item. Commissioner Wilkinson seconded the motion for discussion. Commissioner Brooks asked whether the last sentence of the change provides that the District may not use funds for any purpose that is expressly prohibited by the granting agency. Mr. Dillon stated that the County's position that the District may not use funds for administrative expenses, including Board compensation was based on the County's belief that the restriction was implicit and not explicit. The proposed legislation would allow a restriction only if the granting agency explicitly imposed the restriction. Discussion ensued on whether the Board could provide health insurance coverage for the Board. Mr. Dillon advised that the Board had the authority to do so. Chairman Bauman asked for any further discussion. All were in favor and the motion was approved.**

2. Approval of Legislative Change to House Bill 471 to 2002-337 Laws of Florida concerning payments of Board salaries

Mr. Dillon introduced the vacancy provision. **Commissioner Beaty moved to approve the amendment as stated. Commissioner Wilkinson seconded for discussion.**

**Commissioner Wilkinson stated that it is his opinion that as an elected Board that all members should be elected. Discussion ensued concerning if an appointment were made when would the appointee's term end. Discussion ensued concerning Chapter**

189, Chapter 337 concerning special districts and the possibility of the Governor appointing Board members. Chairman Bauman invited public comment. Ms. Jill Patterson, a Key Largo resident stated that she felt strongly that if time permits the public should vote on all members of the Board. Mr. Burke Cannon also believes that the public should elect members. Discussion ensued concerning appointments adversely impacting the staggering of the expiration of individual members terms and the cost of holding a special election. Rewording the amendment was discussed. Chairman Bauman requested a roll call vote, which was as follows:

Commissioner Beaty	No
Commissioner Brooks	No
Commissioner Tobin	No
Commissioner Wilkinson	No
Chairman Bauman	No

The motion was defeated.

Commissioner Beaty made a motion to reconsider the legislative change with a change to amendment paragraph 6, striking the words "remainder of the expired term" and replacing it with "the next general election. Commissioner Wilkinson seconded the motion. Chairman Bauman requested a roll call vote.

Commissioner Beaty	Yes
Commissioner Brooks	No
Commissioner Tobin	Yes
Commissioner Wilkinson	Yes
Chairman Bauman	Yes

The motion carried.

3. Approval of the KLWTD Annual Financial Report to the Department of Banking and Finance

Commissioner Beaty moved to approve the KLWTD Annual Financial Report to be forwarded to the Department of Banking and Finance. Commissioner Brooks seconded the motion. All were in favor and the motion was approved.

4. Approval of Amendment No. 1 to the Haskell Contract

Mr. Dillon informed the Board that the item was a housekeeping amendment that would change the notice from the default of Lewis, Longman and Walker to Mr. Dillon and includes a clause concerning the prompt pay act. Commissioner Wilkinson moved to approve the amendment. Commissioner Beaty seconded the motion for discussion. Commissioner Brooks asked if the persons to receive notices should be identified by title instead by name. It was suggested that both title and name be used and a copy to the KLWTD P.O. Box. The Board requested that Haskell sign the amendment prior to it being presented for consideration. The motion was withdrawn and the item was tabled until a future meeting.

5. Approval of Amendment No. 2 to the Standard Engineering Consulting Contracts

Mr. Dillon explained to the Board that the amendment was drafted to clarify that the Board approves invoices and not the staff. **Commissioner Brooks moved to approve the item. Commissioner Wilkinson seconded the motion. All were in favor and the motion was approved.**

6. Acceptance of the Government Services Group, Inc. Letter of Resignation and the GSG Time and Materials Exhibit A

Mr. Sheets stated that the letter was submitted at the request of the Board and to formalize the verbal resignation tendered in December of 2003. The letter indicates that by this notice GSG would provide services under the present contract until May 9. It was noted that monthly fees are not to exceed \$6,600.00 for grant management. Commissioner Tobin stated that he was not ready to accept a time and materials option for any additional work. Chairman Bauman stated that the resignation has been accepted but the Board requires more discussion concerning the time and materials option.

Mr. Sheets requested clarification and direction from the Board because after the last meeting and discussion with staff and the chair he believed that after the 90 days any work would be compensated at time and materials. Commissioner Tobin stated that he would needs projections before acting. Mr. Dillon was asked to draft a document to cover services after May 9, 2003.

Commissioner Brooks asked if the resignation was negated. Mr. Sheets stated that under the present contract this notice indicates that GSG would not be the General Manager after May 9, 2004 and that for services to continue after that point a new scope of service must be defined and approved by the Board. Commissioner Brooks expressed concern that immediate steps must be taken to replace GSG. Chairman Bauman proposed an all day meeting on a Saturday to develop solutions. Chairman Bauman stated that a formal transition plan is needed.

Commissioner Beaty asked if the "true up" on hours expended by GSG had been provided. Mr. Sheets stated that the information had been provided in the January 7, 2004 agenda materials.

Mr. Sheets agreed to bill under the second contract for grant administration on an hourly basis with a not to exceed amount of \$6,600. Chairman Bauman asked if this was acceptable to the Board. Commissioners Tobin, Brooks and Chairman Bauman stated yes. Mr. Sheets stated that he would forward his recollection of the Board's wishes to Mr. Dillon.

7. Approval of the Pending Payments List for February 11, 2004

Mr. Miles informed the Board that he had emailed a copy of the invoices to each member of the Board last Thursday. Commissioner Tobin questioned WEC's request for payment on the Calusa Campground report and if it was lump sum. Mr. Sheets and Mr. Dillon confirmed that they had completed the scope of the work order. **Commissioner Beaty moved to approve the Pending Payments list for February 11, 2004. Commissioner Tobin seconded the motion. Commissioner Wilkinson requested a future agenda item to discuss charging some items against the grant for administration. With no further discussion all voted in favor and the item was unanimously approved.**

## H. General Manager's Report

### 1. Quarterly Financial Reports

This item was presented for informational purposes only.

### 2. Update on the Tax Exempt Status

This item was provided for informational purposes only. Mr. Miles noted that the certificate must be sent with each purchase order and that the District on a District check to be considered tax-exempt must issue payment.

### 3. February 4, 2003 Thirty Percent Design Meeting Minutes

This item was provided for information only. Commissioner Wilkinson stated that he didn't like the format and it was not at the level of detail he would like to see. Mr. Sweat stated that these types of notes are typical of design construction meetings. Chairman Bauman asked who follows up items indicated in the minutes and when. Mr. Sweat stated that the tasks had been assigned during the discussions at the meeting. Mr. Dillon noted that the contract indicated that a submittal protocol was required to be submitted to the Board but there is not a contractual need for minutes. Discussion ensued on the development and implementation of an issue log.

Commissioner Brooks noted that at last meeting he requested that who ever provides reports or minutes states who provided them.

### 4. Update on the rescheduling of the Transition Plan, Administrative Procedures and Strategic Planning Workshops

Mr. Sheets stated that there was no backup information provided with this item. He informed the Board that staff had meet and would provide a memorandum at the March 3 meeting. Mr. Sheets indicated that a series of planning workshop should be scheduled between now and the end of April and all day meetings to be held on Saturdays were suggested. These workshops would cover strategic planning, the transition plan and administrative procedures.

The dates of March 20, March 27, April 3, and April 17 were offered. It was suggested that for the strategic planning process a facilitator be brought in to help the process. The strategic plan would help to address the other issues. The Chairman would be given names of facilitators to contact.

Mr. Burke Cannon a Key Largo Resident commented that a facilitator is an interesting concept. From his past business experience workshops and seminars were a productive way to find direction and set priorities.

Commissioner Tobin commented that strategic planning has been discussed, but there are serious deadlines that need to be considered immediately, including hiring a secretary clerk. He suggested dual planning with advertising in the Keynoter and Reporter to begin interviewing for a secretary/clerk.

Mr. Sheets informed the Board that there would be a conference call on Thursday that would include Mr. Castle, Mr. Sweat, Mr. Dillon and himself to discuss the FONSI fine points with Ms. Science Kilner of FEMA.

Mr. Sheets informed the Board that there would be a meeting scheduled to go over the site 100.5 issues including site mitigation and the recently discovered issue of the two land use zones. It would include Mr. Dillon, Mr. Sheets, Mr. Sweat, a Brown and Caldwell representative and Commissioner Tobin.

Chairman Bauman recessed the meeting at 7:55 p.m.

Chairman Bauman reconvened the meeting at 8:05 p.m.

#### I. Engineer's Report

##### 1. The Haskell Company's Design Development Protocol Review

Mr. Castle stated that the design build agreement required a design protocol. This draft includes that staff's comments and is being presented for the Board's comments. Once accepted by the Board then Haskell will implement the protocol. Mr. Castle would include an in issue log, which is to include comments and who made them, who will take care of them and when they are completed. The Manager will maintain the log and provide a copy to the Board and staff. Discussion ensued concerning the Manager being the main contact and if there would be problems with the upcoming transition. Mr. Castle offered his assistance during the transition but with a change in the scope of work compensation would need to be discussed.

Commissioner Wilkinson stated that the Board must be copied on all comments and requested Mr. English to provide him with the comments from Haskell and Brown and Caldwell on the 30% submittal.

Discussion ensued concerning the receipt of the 60% drawings, when the 99% drawings would be ready and how vacant lots would be hooked up. It was noted that Haskell had been requested to design the entire project and the District would build as far out as funds would permit.

Mr. Sweat stated that the Board would be copied on the issue log and informed of the next design meeting.

Mr. Dillon requested direction from the Board concerning his attendance at the design review meetings. It was the consensus of the Board the Mr. Dillon not attends any subsequent design meeting.

#### J. Public Comment

Mr. Burke Cannon stated that he questions why the Board is considering a transition at this time. It is his opinion that there are two many issues facing the Board to be changing administration.

#### K. Commissioner's Items

##### 1. Discussion of Strategic Planning – Chairman Bauman

Please see above.

## 2. Update/Discussion of Near Shore Water Testing – Chairman Bauman

Chairman Bauman stated that it would be a disservice to Key Largo residents if no testing was done to document the water quality during droughts, the tourist season, the rainy season, etc. Discussion ensued. Commissioner Wilkinson noted that lake water testing could be done by certain government agencies at no charge such as Florida University. Commissioner Wilkinson offered to pass information to Mr. Sheets. Mr. Sheets stated that he would contact the agencies and update the Board.

## 3. Discussion of "Decision Time" Email – Commissioner Wilkinson

Commissioner Wilkinson's email stating concern over the project not being able to meet AWT standards was brought to the floor at 8:35 p.m. Mr. Castle stated that he firmly believes that AWT standard could be met with present design and modifications. Discussion ensued on the expansion of plants on the site. Mr. Sweat stated that the plant would be built, as capacity is needed.

## 4. Discussion of e-mails and communications – Commissioner Brooks

Commissioner Brooks stated that he would second terminating the present design build contract and starting all over if so much time and effort hadn't been committed.

Commissioner Brooks is concerned with limited distribution of emails and asked Mr. Dillon if the person who writes the emails discussing things coming before the Board can be responded to. Mr. Dillon stated that there couldn't be any substitute for debate. All debate must be held at a public Board meeting he added that the first opinion out is the only opinion out until a meeting.

Chairman Bauman requested that Commissioner Wilkinson not respond to Board issues by email. Discussion ensued on the Sunshine Law.

Mr. Dillon was asked his legal opinion of the situation. Mr. Dillon stated that no one has violated the Sunshine Law and that the first one to speak is the only one to get to speak until the meeting. Mr. Dillon stated that he would warn the Board if he suspects a violation.

## 5. Discussion of enacting a resolution to begin a search for an administrative secretary/clerk – Commissioner Tobin

Commissioner Tobin wants to advertise for secretary so that an office can be set up and the Board can get control of their documents. He suggested to get started with Mr. Dillon as the point person. Chairman Bauman stated that it would be more logical to hire a manager first who would then hire the clerk and set up the office. Mr. Dillon stated that he must have strategic plan because there is no consensus of the Board on any of the issues relating to the transition. Mr. Sheets commented that at this time what to advertise for has not been decided, will the employee be full-time, part-time a contractor will the person receive benefits, where would they work from, etc.

Commissioner Tobin requested the item be included repeated as a discussion item on the next agenda.

Commissioner Beaty stated that as part of the transition committee it would be premature to look for a secretary prior to finding a general manager.

Commissioner Tobin requested that a discussion of office space be place on the next agenda.

6. Discussion of the Legislative Forum Membership Meeting and Legislative Reception – Commissioner Brooks

The item was presented for information only. No members expressed interest in attending.

7. Update/Discussion on the Ileana Ros-Lehiton meeting – Chairman Bauman

Chairman Bauman informed the Board that at the meeting most people attending stated that finding solutions to the wastewater issue are paramount in the Keys. All the local officials present expressed the same opinion. Ms. Ros-Lehiton promised as much money as politically possible for the wastewater issue.

8. Discussion of a resolution to send a letter to the Florida cabinet and Governor expressing KLWTD's unanimous support for: The Landmark Monroe County Conservation Proposal (LMCP) that sets goals for protecting near shore waters and native forests – Commissioner Brooks

Commissioner Brooks stated that passing the resolution was a matter of stating interest in getting money. Chairman Bauman stated that this is a strategic planning issue. Commissioner Tobin stated that this is an on going debate that the KLWTD should not become involved with quickly. Action on this item would have long-term implications and the resolution needs work if it needs a conclusion.

9. Commissioner Wilkinson made motion to elevate the FEMA Grant Extension suggested in his 2-15-04 email to an action item on the next agenda.  
Commissioner Tobin seconded the motion.

Mr. Sheets stated that he would contact with Ms. Science Kilner of FEMA and provide the Board with a status report at the next meeting.

L. Meeting Adjournment

Chairman Bauman adjourned the meeting at 9:25 p.m.