



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

5:00 PM Wednesday, May 19, 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, General Manager, GSG (via telephone)  
Charles Sweat, Director of Operations, GSG  
Thomas Dillon, Board Attorney  
Ed Castle, Board Engineer  
Faith Doyle, Board Clerk

## Guests Present

Charles Kupper  
Mark Weiss  
Peter Kinsley  
Mary Lou Wilkinson

### A. Call to Order

Chairman Bauman called the meeting to order at 5:02 p.m.

### B. Pledge of Allegiance

The Pledge was recited by all present.

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

Chairman Bauman requested the following additions: Discussion of the revision to the master plan, FEMA Phase II Contract and prior to action on item F1 to have a discussion on what type of candidate should be considered for the Manger's position.

Mr. Dillon requested a discussion concerning the direct purchase of items to be added as Item E6.

### D. Public Comment

Mr. Robert Burt requested a copy of the resident letter that is to be forwarded to the KLTV homeowners.

E. Legal Counsel's Report

1. Update on the Haskell Notice of Delay

Mr. Dillon had received a letter concerning this item and will give a formal response to the Board at the next meeting.

2. Update on direct/indirect costs issue

Mr. Dillon will report on this item at the next meeting.

3. Update on legislation

Mr. Dillon reported that the legislation is before the governor and he will inform the Board when the legislation has been signed.

4. Update on County funds

Mr. Sweat informed the Board that the County would be forwarding the check for approximately \$150,000 tomorrow.

5. Update on the lease for potential rental space

Mr. Dillon informed the Board that the Bank of America has not sent a lease form for review. Mr. Dillon has made several requests. Commissioner Brooks brought Chris Sante's building to the floor for discussion. It was noted that the location would not be available for 90-120 days. Commissioner Tobin suggested that a six-month interim rental space be considered. It was noted that building is expandable. It was the consensus of the Board that the Sante building is looked into along with a temporary rental space. Mr. Dillon asked if the Bank should be pursued any longer. The Board directed him not to pursue it any longer. Commissioner Tobin stated that he follow up with Mr. Sante for a proposal in writing and will bring it back to the Board for consideration.

6. Discussion of direct purchases by the District

Mr. Dillon stated that there is approximately \$900,000 in equipment and supplies that if directly purchased by the District would save approximately \$60,000 in sales tax. The risks include delays of receipt of items and cost increases. Mr. Dillon asked the Board for direction on this issue. Discussion ensued on benefits and difficulties involved with direct purchase. Mr. Kinsley stated that Haskell would receive the equipment and verify the orders and if necessary request collections of short items and exchange of damaged items. Mr. Dillon stated the process would include a deductive change order to the original contract being issued by Haskell and a purchase order being issued by the District and payment from the District to the vendor. Payment issues were discussed. Commissioner Wilkinson is opposed because of the potential risks involved and the fact the risks would burden the public funds. Commissioner Tobin requested Mr. Dillon to review and recap the terms of the contract to demonstrate to the Board the process. The poll of the Board was four in favor of direct purchases. The Board gave its consensus to not have Mr. Dillon summarize the contract terms.

**Chairman Bauman requested this item be placed as an action item on the next agenda.**

Mr. Dillon's memo concerning the DCA Agreement for the FEMA Phase II Grant was presented and reviewed and made part of this record as Attachment A. Mr. Dillon informed the Board of the points that need to be addressed prior to signing. Mr. Sheets stated that he agrees with Mr. Dillon's points. Commissioner Tobin asked about the requirements concerning land conveyance versus permanently preserving the easement. Mr. Dillon stated that the agreement incorporates by reference the FEMA FONSI requirements. Discussion ensued on the 2.6-acre site mitigation and if that is enough land for future expansion. The Board directed staff to arrange a teleconference with Fish and Wildlife, George Garrett, Mr. Dillon and the manager on this issue (conveyance/mitigation). Mr. Dillon suggested the meeting be held prior to the June 2 meeting so that the funding agreement can be acted upon. Mr. Sheets suggested that Miles Anderson be involved in the conference. The Board agreed. Mr. Sheets also suggested that Mr. Anderson be available at the next meeting to address the Board's concerns. Commissioner Tobin volunteered as the Board representative to be on the conference call. Commissioner Tobin stated that the opinions are not carved in stone and can be renegotiated and suggested Mr. Dillon approach the Fish and Wildlife Department concerning a change to the agreement. Commissioner Tobin believes the document should be changed by hand and sent back. Mr. Sheets cautioned that changing the document should be done only if Miles Anderson is consulted. Mr. Sheets agreed with many of Commissioner Tobin's concerns with the agreement but believes Mr. Anderson should be approached as an advocate for the District. Commissioner Wilkinson has many difficulties with the agreement. He listed some as being the clause concerning a 24 month contract or it will be terminated, the need of four acres for expansion or more for sludge de-watering, and the need for more detail on the responsibilities of all parties and clarity on the payment of the vendors. Discussion ensued on the definition of conservation easement and if the size of the lot would adversely impact the plant.

Chairman Bauman stated that staff should request more land, no conveyance and to have Representative Sorensen involved if possible.

Mr. Dillon asked if the Board requires a resolution from the BOCC stating that they were paying for site mitigation. It was the consensus of the Board that he request one. Mr. Dillon stated that Mr. Garrett would formulate the dollar value of the site mitigation needed. Mr. Dillon asked the Board if Fish and Wildlife should be approached concerning requesting 4.2 acres and if it is granted should 4.2 acres be restored. It was the consensus of the Board that the subject be discussed during the conference call.

#### F. Action Items

##### 1. Approval of the Manager Candidate

Chairman Bauman brought to the item to the floor for discussion. Commissioner Beaty stated that he had looked for extensive administration and engineering background while reviewing the resumes. He felt important qualities included being resourceful, solution oriented, being familiar with present day treatment processes and collection processes, knowing the county players and being able to nurture relationships with FKAA and the BOCC. Other important qualities included being a resident, a high-energy type "A" personality, a strong personality, and a multi-tasker that does not procrastinate.

Commissioner Brooks agreed with Commissioner Beaty's description of a manager but saw it more as an administrative position, not an engineering position. Commissioner Brooks did not feel that any of the candidate's vision to organize the District in 3-6 months was sufficient.

Commissioner Brooks is concerned that the clerk and CFO have not been interviewed because they need to work well with the manager.

Commissioner Tobin agreed with the description of a manager stated by Commissioner Beaty. His original thoughts were the clerk and CFO should be hired first then the manager. Commissioner Tobin stated that he had worked with Ms. Simpkins in the past but he is not sure a full time clerk is necessary and that a clerk/administrator is sufficient. He believes the CFO should not be a stand-alone function and that GSG could continue to do the finance function.

Commissioner Wilkinson agreed with Commissioner Beaty's comments. Commissioner Wilkinson believes the manager should interview and hire the clerk. The clerk should be considered the administrator and run the office and keep the records. A CFO is not necessary but a bookkeeper would be.

Chairman Bauman stated he was looking for an overall manager for the future of the KLWTD, not just for the two current projects, someone with planning, grants and bonding experience. He did not get a good vision statement from any of the candidates. He was not looking for an engineering or wastewater person specifically but an overall administrator.

Commissioner Brooks questioned the hiring process. It was stated that Mr. Dillon would negotiate with the individual to develop an employment agreement. Salary was questioned. \$50 an hour was stated in the paper and the range of \$75-100,000 mentioned by the candidates during the interviews. Contracting with the individual was discussed versus employment.

**Commissioner Wilkinson made a motion to negotiate with Charles Fishburn for the manager's position. Commissioner Beaty seconded the motion for discussion.**

Commissioner Beaty stated that all of the applicants could have served the District well but presently, Mr. Fishburn was the best fit. Commissioner Brooks was also very pleased with the candidates and stated that they all were qualified in various aspects and that it was a pleasure to meet them. Commissioner Tobin thanked the candidates for their interest. Commissioner Wilkinson agreed that all the candidates were qualified and that Key Largo had a great wealth of talent living in its borders, which was demonstrated by the applicants. Chairman Bauman stated he believes the Board was making a mistake if the one candidate who had 30 years of experience with all phases of wastewater, has worked with 30 municipalities at all levels and has offered to create a system from scratch was not selected. **Chairman Bauman then requested a role call vote.**

<b>Commissioner Beaty</b>	<b>Yes</b>
<b>Commissioner Brooks</b>	<b>Yes</b>
<b>Commissioner Tobin</b>	<b>Yes</b>
<b>Commissioner Wilkinson</b>	<b>Yes</b>
<b>Chairman Bauman</b>	<b>No</b>

**The motion carried. Chairman Bauman thanked Mr. Weis and Mr. Kupper again and for their time and interest in the District.**

Commissioner Brooks asked when the negotiations with Mr. Fishburn would begin and how he would be informed of his selection. Mr. Dillon stated that he would begin negotiations this weekend. Mr. Sweat stated that he would call Mr. Fishburn at the conclusion of the meeting.

Commissioner Brooks stated that he had contacted Ms. Simpkins who is presently making \$47,000 and may need financial incentive to move back to the area. Commissioner Brooks questioned the expense of the transition and how to balance out salaries with what the budget could bear. Discussion ensued on the salary and of the manager.

Commissioner Brooks questioned what would happen if negotiations with Mr. Fishburn failed. Mr. Dillon stated that he would provide the Board with a status update at the next meeting.

Chairman Bauman requested that the clerk and CFO positions be added as a discussion item on the next agenda.

2. Approval of the Amendment to the Management Services Agreement By and Between Key Largo Wastewater Treatment District and Government Services Group, Inc.

**Commissioner Wilkinson moved to approve the item Commissioner Brooks seconded the motion for discussion.** Commissioner Wilkinson asked what Chairman Bauman's role, as facilitator would entail. Chairman Bauman stated that he envisions the GSG workload would be diminished by the Board's and new managers efforts. Discussion ensued on the process of tasking. The Board requested that under point five all Board members and staff be copied on the email confirmation of tasks. **All were in favor of the motion and it was unanimously approved.**

3. Approval of the Pending Payments List for May 19, 2004

**Commissioner Brooks moved to approve the May 19, 2004 payments pending list. Commissioner Beaty seconded the motion. All were in favor and the motion was unanimously approved.**

4. Approval of the Project Design Protocol

**Commissioner Brooks moved the item. Commissioner Wilkinson seconded the motion for discussion.** Mr. Castle stated that during the draft reviews all concerns were addressed. Commissioner Wilkinson stated that the process has been essentially completed and the protocol is a moot point. Commissioner Tobin questioned if it had been addressed in the contract. Mr. Dillon stated it was required by the contract but not drafted and finalized. Discussion ensued on the protocol. **The question was called and the Chairman requested a roll call vote.**

<b>Commissioner Beaty</b>	<b>YES</b>
<b>Commissioner Brooks</b>	<b>YES</b>
<b>Commissioner Tobin</b>	<b>NO</b>
<b>Commissioner Wilkinson</b>	<b>YES</b>
<b>Chairman Bauman</b>	<b>YES</b>

Commissioner Brooks asked if the permit application had been completed. Mr. Kinsley stated that the DOT permits were in hand, the County permits would be forwarded after a question on asphalt restoration was forwarded and the amended DEP application has been forwarded and he expects the collection system permit within 30 days. Mr. Kinsley informed the Board that the Plant Facility Permit, the ERC and the Well 1 & 2 permits were signed by the Chairman and forwarded to the FDEP. The FDEP has thirty days to respond with questions.

## G. General Manager's Report

### 1. Recommendation on Water Quality Testing

Mr. Sweat stated that information continues to be collected to establish a base line and that a recommendation would be made in the near future.

Mr. Sheets stated that he is committed to working with Mr. Fishburn on a smooth transition.

## H. Engineer's Report

Mr. Castle stated that the scopes of service he is developing should be considered the next step in developing a planning tool for the District. The scopes were emailed to the Board on Monday but did not make it for the agenda deadline. Mr. Castle provided aerial photographs that had outlined the three sections he was suggesting.

It was the consensus of the Board to postpone action on the item until the transition of the manager.

Commissioner Brooks stated concern by the designation of 'North Key Largo' and suggested it be referred to as mile marker 107 and north, or the Lake Surprise area. Mr. Castle stated he would change the proposals to reflect mile marker numbers.

## I. Public Comment

Mr. Burt asked if the July 22, 2004 date had been confirmed with the Civic Club. Mr. Brooks confirmed that it had. The Board requested that the meeting be noticed.

## J. Commissioner's Items

### K. Update on past agenda items:

Chairman Bauman asked if any one wished to discuss any of the update items.

1. FEMA FONSI Status
2. Water Quality Testing
3. Resolution of \$100K loan repayment issue
4. Site mitigation
5. KLP vacant lot resolution

Commissioner Brooks questioned if this issue was addressed in the permit request. Mr. Castle stated that lines had been placed in front of the vacant lots, with light hashing for future development. Discussion ensued on the cost estimates. It was suggest the issue be postponed until the new manager was on board. Discussion ensued on the elimination of cesspits.

6. Project request for FEMA deadline extension
7. CDBG Grants and/or funds for private connections
8. Procedures
9. Web Site Development

## L. Meeting Adjournment

Chairman Bauman adjourned the meeting at 7:40 p.m.

**Thomas M. Dillon**

# Memo

**To:** Key Largo Wastewater Treatment District

**From:** Thomas M. Dillon

**CC:** District Staff

**Date:** 5/18/2004

**Re:** DCA Grant Agreement

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**Note: This memorandum constitutes attorney work product and attorney communications.**

I have reviewed the grant agreement form transmitted by the Florida Department of Community Affairs under date of May 20, 2004 [sic]. My comments follow:

Page 13: Section 16(b) specifies the requirements to obtain advance payments. Option 2 should be checked and an amount filled in based on expected expenditures during the first 3 months of the Agreement. Attachment F must be completed to specify the amount of the advance payment and an explanation of the necessity for and proposed use of the advanced funds.

Page 17: Section 22 seems to anticipate that vendor invoices will be submitted to the DCA for payment. I do not understand that to be the expected method of payment of vendors.

Attachment A:

Page A-1: Re: Open Space:

The first paragraph states only that the District "will permanently preserve the un-used [sic] portion of the WWTP project parcel (18.4 acres) for conservation purposes, and restore 2.6 acres of tropical hardwood hammock to replace the project site's protected lost habitat functions."

However, the third paragraph provides that "The construction phase may proceed with adherence to the various mitigation measures and permitting requirements referenced in the SFONSI." Therefore, the Agreement incorporates by reference all of the requirements expressed in the SFONSI, and all the requirements incorporated by reference in the SFONSI, notably the U.S. Fish & Wildlife Service Biological Opinion, which serves as the basis for the SFONSI. Note that these requirements are stated in a letter of 5/16/04 from



FEMA to the Florida Division of Emergency Management, attached as Pages A-3 and A-4. Note further that although the SFONSI was apparently intended to be attached to the Agreement beginning at Page A-8, only the odd-numbered pages of the SFONSI were copied.

Based on the foregoing, it is my opinion that when the District signs this Agreement, the District will be contractually bound to perform all of the requirements in the SFONSI and the Biological Opinion, including:

- Locating a site or sites totaling 2.6 acres for hardwood hammock habitat restoration on the island of Key Largo. Biological Opinion Condition No. 1.
- Coordinating with a suitable environmental lands management program to receive title to the hardwood hammock not proposed for development. Biological Opinion Condition No. 2.

The District must provide FEMA with a copy of all applicable permits and other pertinent documents that demonstrate compliance with the SFONSI before construction and receipt of federal funds.

I recommend that the District complete efforts to specify exactly the manner in which these conditions will be satisfied prior to signing the Agreement.

Page A-5: Schedule of Values:

The district should confirm that the schedule of values is consistent with the schedule of values in the Haskell Design-Build Agreement.

### **Conclusions:**

Based on the foregoing, I recommend that the District complete the following before signing the Agreement:

- Obtain written confirmation of agreement by FEMA and the U.S. Fish & Wildlife Service to precise means and methods by which the District may satisfy the conditions of the SFONSI. I understand the principal conditions to be related to conservation of open space, but I recommend that the District obtain confirmation that all conditions precedent to construction and receipt of federal funds have been, or will be, satisfied.
- Obtain written confirmation of the source(s) of funds to be used to meet the District's obligations related to conservation of open space.
- Determine the amount of any needed funds advances and complete the appropriate forms.
- Determine whether Section 22 (P. 17) is applicable to this project.
- Ensure that the schedule of values at Pages A-5 – A-7 is consistent with the Design-Build Agreement.
- Replace the incomplete copy of the SFONSI with a complete copy.