



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

5:00 PM Wednesday, January 7, 2004
Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, Monroe County, Florida

Board Members Present

Gary Bauman
Cris Beaty
Charles Brooks
Andrew Tobin
Jerry Wilkinson

Staff Present

Robert Sheets
Tom Dillon
Ed Castle
Faith Doyle
Chuck Fishburn

Guest Present

Steve Gibbs, Key Largo Free Press Reporter
Ann Henson, Reporter for the Key Largo Reporter
Nos Espat, Randazza Inc.
Pete Kinsley, Haskell Company
Will English, Haskell Company
Mary Lou Wilkinson, Key Largo Resident
Gaile Jelinek, Key Largo Resident
Burke Cannon, Key Largo Resident
Vicky Fay, Key Largo Resident

A. Call to Order

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

B. Pledge of Allegiance

The pledge was recited.

C. Additions, Deletions or Corrections to the Agenda

Commissioner Brooks requested that item G6 be renamed "Discussion of letter from Randazza to Haskell".

Items F1 and F2 are one in the same per Robert Sheets and can be combined.

D. Public Comment

Chairman Bauman stated that public comment would be entertained at pertinent times during the meeting.

E. Action Items

There were no action items.

F. General Manager's Report

1. DCA Bonding Proposal
2. Overview of Funding Scenarios

Items 1 and 2 were combined and Mr. Sheets reviewed the information provided noting that the scenarios were based on capacity fees of \$2,700 and other factors. Commissioner Tobin asked why a report and why being done at present. Mr. Sheets stated that the memo was drafted at the request for information from two board members. Chairman Bauman wanted information to review as an informational item only. The scenarios were reviewed. Mr. Sheets noted that \$9,600 dollars per EDU would be a reasonable cost and a possible savings of 53 million dollars could be realized by doing all projects at once versus \$14,000 per EDU if done piece mill.

Commissioner Brooks commented that future financing couldn't be done until this portion of the project is complete. Future projects could not be funded from the revenues to be generated from the first project per several reports already generated. Commissioner Brooks stated that these scenarios are a good look at future options for further developments. Commissioner Brooks also informed the board about options that were mentioned at a BOCC meeting that should be reviewed by the KLWTD. Commissioner Brooks believes all of these options should be reviewed and future projects from the master plan need to be looked at for future development. Discussion ensued. Commissioner Brooks concluded that if EEA's were complete then KLWTD would be ready for funding.

Commissioner Wilkinson asked if all costs were considered in the scenarios. Mr. Sheets stated that all overhead costs were included.

Chairman Bauman asked if there any further comments. Commissioner Bauman thanked the manager for the information provided.

3. Status Report on the Transition Plan

Mr. Sheets stated that the information was a precursor to the 1/14 workshop and that the transition team continues to meet and that the document presented today was not for discussion at this time. The document was briefly reviewed.

Mr. Sheets informed the Board that he had been in contact with Ms. Science Kilner of FEMA concerning the status of the FONSI. A status report would be provided at the next meeting.

G. Legal Counsel's Report

1. Notice of Delay from Haskell

Mr. Thomas Dillon stated that the draft letter was finalized and sent to Haskell concerning delays considered to be beyond their control. More specific information was requested and received from Haskell that confirms what the causes for the delays were and an updated schedule. Mr. Dillon had received the information on 12/29 but had not completed his review. Mr. Dillon stated that the delay is an important issue and most of the float in the contract has been used. There is not much more room for delay and further delay could impact the project. The letter was discussed and Mr. Dillon requested that copies be forwarded to the Board. Mr. Dillon will analyze the schedule and recommend additional time required.

Commissioner Tobin commented that the stalemate must come to an end and the Board needs to make a decision and move forward. Mr. Dillon agreed and suggested that a resolution be made tonight. The Board's approval of USBF has raised concerns with Haskell and they believe the USBF process would place undue risk on the Haskell Company.

The Chairman combined agenda items G1 and G6 at the suggestion of the Board members.

Discussion ensued on the 5531 standard, design requirements to meet the standard and the costs involved. Haskell had been instructed to get the information for the changes required from the vendors to make a determination, however Randazza did not provide the information. (Randazza's letter of response was included in the agenda packages and briefly reviewed).

Discussion ensued on down payments. Mr. Dillon suggests that all the necessary information be provided prior to money changing hands. It was noted that Randazza required a 30% down payment per documents forwarded to the Board. Fluidyne was also contacted to verify the amount of money they required with a purchase order. Fluidyne stated that no money was required upfront.

Commissioner Wilkinson asked if the critical path had been reviewed. Mr. Dillon stated that staff had received it but has not had the opportunity to review it. However, the float is about depleted and if there are time overruns there would be liquidated damages, which is not a comfortable position for the district or the contractor.

Commissioner Wilkinson stated that it is critical and the project must move on. He has done independent study on his own and has discovered that SBR is a process created for nitrogen problems. It was noted that SBR could be adapted by adjusting operations and is very flexible.

Commissioner Beaty requested that the vendor and contractor state their opinion of the issues. Concerning payment terms Mr. Kinsley stated that Randazza could not provide performance and payment bonds and the Haskell standard purchase order was not acceptable to Randazza. Mr. Espat of Randazza responded that only one set of terms was acceptable (30 percent down upon execution of purchase order and 70 percent at

completion of fabrication in advance of startup) and Haskell would not accept these conditions and it wouldn't be prudent for the district to accept them. Concerning the critical path analysis if the requested information would be provided he would review it. Sharing of the float ownership was touched on.

Mr. Nos Espat of Randazza commented that he had received the requests and had responded to the Haskell Company. He stated that Purestream has been in business for 30 years and changed the process for down payments 10 years ago but they are the same wherever the plants are built. He stated that his problem with general contractors was they ask for 10 percent upfront and then place conditions on other entities funds. Mr. Espat stated that to redesign and provide drawings would be costly and are not needed. Haskell is asking for a complete detailed set of drawings that will go to the FDEP who will ultimately permit the system. The payment terms are not new and there is no way Randazza would accept 90 percent after delivery. Mr. Espat stated that Randazza is not treating the KLWTD any differently than any other client. Mr. Espat stated that Randazza never gets paid by general contractors but by the governmental entity because they don't pay sales taxes. Mr. Espat stated that if the KLWTD purchased the equipment he would not ask the Board to come up with 30 percent down but the question hasn't been answered as to who is purchasing the equipment.

Commissioner Brooks raised issues concerning the contract including the option of the Board purchasing the equipment to avoid paying sales tax and Haskell accepting the Board's decision to use USBF.

Commissioner Brooks asked Mr. Espat directly if the board would be charged a down payment if the Board purchased the equipment. Mr. Espat stated that he would not charge the Board. Commissioner Brooks believes that not having a purchase order would remove the impasse and that the impasse is more of an issue of if Haskell would honor their contract. Commissioner Brooks requested that Mr. Espat confirm that he would also provide the record drawings as requested by Haskell at the same time he provides them to the FDEP. Mr. Espat stated that he would and that the Randazza engineers would sign off on the design and that it would meet AWT standards and meet the FDEP permit standards. Commissioner Brooks asked Mr. Espat if their design calculations were proprietary. Mr. Espat answered in the affirmative. Commissioner Brooks wants the Board to move forward with the present decision to use USBF.

Commissioner Brooks asked if Mr. Kinsley would accept sending the FDEP a design process approved by Randazza engineers. Mr. Kinsley stated that Brown and Caldwell are the engineers and takes a professional oath to sign and seal designs that will work. However, insurance coverage would most likely be jeopardized if the system fails if the Board departs from the recommendation made. Mr. Kinsley stated that if Randazza provides the design and resolves the design liability issue—the warranty would need to be provided by Randazza and Haskell would require relief from the performance warranty then we can start tomorrow. However, after four months of due diligence and with staff and the design professionals stating it would not work, Haskell will honor the Board's decision to build an USBF system but could not provide a warranty.

Mr. Dillon stated legally the contract is a design build contract and Haskell is required to do the engineering and Haskell or Brown and Caldwell could argue that the KLWTD has acted in bad faith if the Board stays with USBF over the recommendation of the

engineers. Mr. Dillon stated that the KLWTD is losing what it paid for via the contract and inviting a great deal of legal issues if the approach is taken that would solve Haskell's problems, making them the KLWTD's problem.

Mr. Dillon stated that the contract was entered into on good faith and fair dealing and it would be a tough argument to insist that Haskell build a system that the engineers don't believe will work.

Commissioner Brooks stated that none of the engineers could prove that USBF would not meet the 5531 AWT standards and that it is only the engineer's opinion that it won't work. An opinion should not be used for a concrete conclusion.

Chairman Bauman stated that the Board has been debating this issue to long and it is now a legal issue. The Board either needs to let Haskell out of their warranty on an 8 million dollar job, or we let Haskell out of their contract or we get another vendor. Mr. Dillon added that per the contract the first step would be to go through mediation, resulting in more money being spent on experts.

Chairman Bauman asked legal counsel's opinion. Mr. Dillon concerning the Board issuing a purchase order to Randazza he would strongly recommend against it and on the treatment process he recommends that the Board reconsider their decision on the treatment process.

Chairman Bauman requested that reconsideration of the decision to use USBF secondary treatment process be placed as an action item on the January 14, 2004 agenda.

Commissioner Brooks brought up a point of order stating that the Chairman could not make the request because he had voted against USBF. Mr. Dillon stated that at this point Chairman Bauman could make the request. Commissioner Wilkinson stated that he would make the request a motion if necessary.

Commissioner Tobin requested legal counsel to provide a legal analysis of the issue for the January 14 meeting because it is now becoming a legal dispute versus a treatment process dispute.

Mr. Burke Cannon stated that as a citizen representing the Key Largo Federation of Home Owners and he had believed the KLWTD Board was a good example of what can be accomplished when you have your own looking after the public good, however he is dismayed that one person on the Board is pushing against the experts and pushing against the legal advice and he states that he will be reporting his concerns to his home owners. He stated that after talking with George Garrett he is convinced that USBF won't work. Mr. Cannon is concerned that money is spent each meeting and when people start paying for the system people will be questioning why the Board's own experts recommendation of SBR was ignored for one member.

Commissioner Tobin stated that the Board's selection of USBF was an attempt to force the engineers and the contractor to take a hard look at the USBF system—during the process the Board continually heard that information wasn't being provided and

reviewed. As the swing vote it was an attempt to have a hard look at something the Board had heard was a better process.

Ms. Vickey Fay stated that as a community member she would ask the Board use due diligence and that the analysis be complete for the Board to make a good decision. She requested that the Board look at capital and operating expenses because she hasn't seen where either can meet 5531. The amount of savings if the Board prepares the purchase order compared to Haskell should be considered because it could be significant savings. Also, Rep. Sorenson has supported the community and there is a bill being considered in February to address relaxing the 5531 standards. Lastly concerning the warranty issue the bottom line is that the long term is that the vendor has to take care of the warranty.

Commissioner Tobin wants the following points to be considered on the 14th, that who purchases the equipment does not affect the warranty, that warranties must be signed for a decision to be made and that all documentation from both equipment vendors needs to be in place to assist in a clear cut decision. Commissioner Tobin asked if an executive session would be required due to the litigation possibilities. Mr. Dillon stated that until a claim is made there is no basis to hold an executive session.

Commissioner Brooks wanted confirmation that no purchase order had been issued. Mr. Dillon confirmed that no purchase order has been issued. Commissioner Brooks asked Randazza if there would be any problem in providing Haskell with preliminary drawings and chemical process calculation between now and the 14th. Mr. Espat stated that there would not be a problem with providing process calculations. Discussion ensued.

Commissioner Tobin requested that the subcontractor agreement be reviewed by Mr. Dillon to see if it is sufficient and fair.

2. Draft Policy for Handling Unsolicited Requests for District Positions

Mr. Dillon stated that this was drafted per the request of the Board and should be discussed at the workshop.

3. Term Consulting Contract Revision

Mr. Dillon stated that Boyle Engineering had requested a change to a paragraph in 25.1 of the standard consulting contracted and he recommends that it not be changed. Boyle Engineering stated that ultimately they would agree to sign the document as written.

4. Term Consulting Contract – Prompt Pay Act Amendment

Mr. Dillon stated that this item has been provided as an amendment to the standard contract for the consultants to consider and sign.

5. Use of County Funds for KLWTD Administrative Expenses

This was an informational item showing the dialogue between Mr. Dillon and the County. Mr. Dillon stated that the communications were sent to aid in the County approving to pay the Board member's honorarium and administrative costs. Commissioner Tobin suggested an attorney general opinion be requested.

COMMISSIONER TOBIN MOTIONED FOR THE ATTORNEY TO DRAFT A LETTER REQUESTING AN ATTORNEY GENERAL'S OPINION ON THE ISSUE. COMMISSIONER BROOKS SECONDED THE MOTION. ALL WERE IN FAVOR AND MOTION WAS UNANIMOUSLY APPROVED.

Legal Counsel was directed to send a copy Mayor Murray Nelson who will assist in the effort.

6. Secondary Treatment Issue

PLEASE SEE ITEM G1.

H. Engineer's Report

1. Status of Haskell Invoices

Mr. Ed Castle stated that Haskell has provided the additional information requested by him and made the suggested adjustments. Mr. Castle is ready to approve the payments and forward them to GSG for review and submittal to the Board.

2. Engineer's Status Report as of December 30, 2003

Mr. Castle reviewed the report provided noting that he has received the 30 percent design drawings for KLTV and that the KLP's will follow after the process decision is made.

Mr. Castle stated that the Calusa Campground Report would be presented at the January 14, 2004 meeting. In summary five connection options were explored and the costs estimated. Also reviewed were the quality of the influent and I & I problems and the necessary corrections to be made.

Chairman Bauman requested the item be placed on the January 14, 2004 agenda.

Commissioner Brooks questioned Haskell suggesting the design meetings being held in Miami, he thought it was the intent of the Board to have business conducted in Key Largo. Discussion ensued concerning the team's discussion to move the meetings to Miami. Commissioner Brooks wants future meetings in Key Largo because he wants to attend them. Mr. Dillon will look at the Sunshine Law to verify if they need to be advertised. Mr. Kinsley will arrange to have them held in Key Largo.

I. Commissioner's Items

1. Discussion of Gino F. Angella's email dated December 22, 2003 – Commissioner Tobin

Mr. Castle addressed the letter from Captain Jax. Mr. Castle stated that Mr. Angella is correct that you have to consider future flows and that the Calusa report would demonstrate that the Board is giving consideration to the issues. Mr. Castle stated that the KLWTD situation is different but as things are being built future flows needs to be considered during the design phase. Flows need to be reviewed for sizing of the pipe at the 100.5 site which means determining all future flows at this time. Mr. Kinsley agreed that flows and master planning need to be addressed. Mr. Castle noted there are many sites to be considered and while the road is being crossed all flow calculations should be looked for the pipe into the plant all other factors do not need to be determined immediately.

Commissioner Wilkinson excused himself from the meeting at 7:15 P.M.

Mr. Castle was requested to provide a draft scope of work and summary on how to approach the plan. Discussion ensued on proposed plans. Mr. Sheets agreed that a formal work authorization scope of work should be solicited from other engineers selected by the Board via the CCNA process once standard contracts are obtained and approved.

J. Meeting Adjournment

A motion to adjourn was made at 7:38 P.M. All were in favor and the motion was unanimously approved.