



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

**5:00 PM Wednesday, June 2, 2004**

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

## **Board members present**

Gary Bauman, Chairman  
Charles Brooks  
Andrew M. Tobin  
Jerry Wilkinson

## **Staff present**

David Miles, CFO  
Thomas Dillon, Board Attorney  
Charles F. Fishburn, General Manager Select  
Faith Doyle, Board Clerk

## **Guests Present**

Mark Weis, Key Largo resident  
Robert E. Burt, KLTV Homeowners Association President

### A. Call to Order

Chairman Bauman called the meeting to order at 5:00 p.m.

### B. Pledge of Allegiance

The pledge was recited.

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

Commissioner Brooks suggested deleting all regular agenda items to look at the FEMA funding/DCA grant agreement along with site mitigation issue. It was suggested the item be moved up on the agenda.

Mr. Tom Dillon stated that he has the signed agreement from GSG for the signature of the Chair and Secretary and once executed it would be filed with the clerk.

### D. Approval of the Draft May 5, 2004 Meeting Minutes, May 15, 2004 Meeting Minutes and the May 19, 2004 Meeting Minutes.

**Commissioner Brooks moved to approve the May 5, May 15 and May 19, 2004 meeting minutes. Commissioner Wilkinson seconded the motion.**

**Commissioner Tobin voted no because he had not read the minutes. All others present were in favor and the motion carried.**

E. Public Comment

No one present wished to address the Board.

F. Legal Counsel Report

Mr. Dillon stated that his email of June 2, 2004 concerning contract issues (Am. No. 1 and the delay notice) had been copied to all members of the Board and Mr. Kinsley of Haskell. He will update the Board when he receives a response.

1. Update on the Haskell Notice of Delay

Mr. Dillon reports that he is close to settling the final issues and he recommends 90 days of additional contract time, with the understanding that no claim for extended overhead would be made. Discussion ensued on the issue. Increased costs of labor and materials cannot be resolved at this time. Mr. Dillon stated that Haskell would forward a memo explaining what benefits the District would get from having Haskell do the KLP work. It was the consensus of the Board for Mr. Dillon to continue the negotiation process without implying that the additional KLP work would be used for bargaining.

2. Update on direct/indirect costs issue

Mr. Dillon stated that Haskell has agreed to his definition of direct/indirect costs and if it is applied consistently the next change order should not cause difficulties. Commissioner Brooks questioned if this was a resolved issue and if further Board action was required. Mr. Dillon stated that no further action from the Board would be required.

3. Update on Haskell bonding and insurance

Mr. Dillon stated that the percent of mark up for bonding and insurance had been reduced from 3% to 2.395%. Mr. Dillon explained the rationale for changing the percentage of mark up on the cost of bonding and insurance. Mr. Dillon noted that the issue could be revisited and is negotiable.

4. Update on the lease of potential rental space

Mr. Dillon stated that he had not pursued this item because it was the Board's wishes to have the new manager involved in choosing the new location. Mr. Dillon had received a copy of the Bank of America lease. It was the consensus of the Board to have this item moved from the Legal Counsel section to the General Manager section.

**Direct Equipment Purchases**

Mr. Dillon requested to update the Board concerning action item G3 "Approval of the KLWTD making Direct Equipment Purchases". He stated that after discussions with Haskell that they would work out any risk factors on direct equipment purchases as mentioned in his memo that was provided as back up for item G3. Mr. Dillon noted that Exhibit J of the contract depicts the items that could be purchased directly.

Discussion ensued on the risks of direct purchase. It was noted that the General Manager should have authority to sign purchase orders to avoid delays in ordering materials so that work is not slowed by delays in ordering.

Commissioner Brooks suggested a blanket purchase order with releases. Mr. Dillon agreed that the blanket purchase order would be best if it was issued on KLWTD letterhead and specified one person to sign for the goods. Discussion ensued on writing a resolution defining the person in authority, the maximum amount of releases and other procedures.

Mr. Miles noted that to comply with Florida statutes, the signatures on the purchase order, receipt of goods, individual draws and receiving reports must be signed by the official District representative. The procedure must also comply with the prompt payment act per Mr. Miles and should be considered. Discussion ensued on the KLWTD disbursement resolution that authorizes the General Manager to approve expenditures up to \$2,500, the Prompt Pay Act and the checking accounts dual signature requirements.

Commissioner Wilkinson stated that he strongly opposes any direct purchases by the District.

Mr. Dillon proposed that he draft a resolution for consideration at the next meeting. It was the consensus of the Board to have the resolution as an action item on the June 16, 2004 agenda. Mr. Miles was asked to provide a forecasting memo on funding the direct purchase concept including the cost of administrative overhead.

Mr. Miles asked the Board if he should plan to attend the June 16, 2004 meeting. It was the consensus of the Board that he attends by phone.

## G. Action Items

### 1. Approval of the manager-select contract

Mr. Dillon stated that the issue appears to be if it would be more beneficial to the District to hire EJ Fishburn Corporation as a contractor or Charles F. Fishburn as an individual District employee. Mr. Dillon had distributed his opinion via memorandums. Mr. Dillon has received some Board responses concerning the negotiation. Mr. Dillon suggested that resolution of the employee versus corporation issue be made and then a discussion of the salary, vacation time and other employment issues be addressed.

Discussion ensued on the employment status of the General Manager and what should be included in the employment contract. A termination clause was discussed with Mr. Dillon stated that a 90 day clause would be included. Commissioner Brooks

stated that he was not in favor of a contract and that a full time employee of the District whose sole attention would be the district. Discussion continued on the terms of employment. Commissioner Wilkinson would favor a contract if it were defined correctly. Commissioner Tobin was in favor of contracting with a corporation because of the tax advantages. Chairman Bauman was in favor of a contracted employee because the District has not developed any employment policies.

Mr. Fishburn was asked his opinion. He gave figures of his suggested contract fees and costs. Mr. Fishburn would want to have the future employees under contract with EJ Fishburn.

Discussion ensued concerning the costs and the legality of having staff members that were not direct District employees and personal performance of duties by a contracted firm. Mr. Dillon stated that any contract must have a personal performance clause.

Commissioner Wilkinson supports the General Manager being an employee of the District. He does not believe the avoidance of paying social security taxes by the District should be a consideration because the taxes will ultimately be paid.

Commissioner Brooks believed the Board wanted to move away from contracted staff. The vision of accomplishing more for less money is being confused. The Board is looking at a contract situation with a local contracting firm instead of a Tallahassee based firm and the numbers quoted are very high in his opinion.

Chairman Bauman stated that the Board and Mr. Fishburn must agree to the terms and presently Mr. Fishburn prefers a contract.

**Commissioner Wilkinson moved to table the item until later in the meeting at 6:20 p.m. The motion died due to lack of a second.**

Chairman Bauman requested the salary/compensation be outlined again by Mr. Fishburn. Mr. Fishburn stated that he would decrease the original \$100,000 requested to \$96-98,000.00 plus a 10% 401k contribution and insurance allotment. Mr. Fishburn stated that he would drop out the inspection services fees if needed.

Discussion ensued on the cost of manager services and for CFO and clerk duties.

Commissioner Brooks stated concern with the inspection functions being done by the chief administrator and the District being charged extra for it. The engineer on staff should be doing inspections. Discussion on the inspections continued concerning whom the Board looks to when problems arise with inspections and the potential conflicts with the administrative person doing the inspections.

Commissioner Wilkinson stated that he does not support contract employment or direct purchases.

Discussion ensued on if two contracts would be required for the administrator and the inspector and if they could be the same person. It was confirmed that inspections

would not begin until August at the earliest and that is when the District would start paying for inspection services.

Discussion ensued on the present cost of the management contract (\$204,000 approximately) and the option that some inspection fees and grant administration services could be reimbursed from grant proceeds to increase the salary package.

Mr. Dillon interjected that how Mr. Fishburn is paid shouldn't effect how the grant will reimburse the District. The grants should help cover overhead. Mr. Dillon believes the Board should not divide the salary with division of duties. The staff would work at the Board's direction to ensure that grant projects carried a fair share of District overhead. Mr. Dillon suggested hiring Mr. Fishburn as an employee with the responsibility of seeing that inspections are done correctly and compensating him with a fair salary as general manager.

Commissioner Brooks asked at what level GSG would be involved from this point forward. It was the consensus of the Board that the services of Mr. Charles L. Sweat would no longer be required. Mr. Ed Castle was asked if GSG would be required to review plans. Mr. Castle was of the opinion that GSG reviews would no longer be necessary.

Mr. Fishburn stated that he is qualified more so than others in the Keys and that in his opinion salary equates to respect from others in the community. He is concerned because as a public employee his salary will be known. Commissioner Brooks rebutted that he doesn't equate respect by paying a big salary to a manager and it is not a good premise to make a salary decision.

**Commissioner Wilkinson moved to approve Mr. Fishburn to be hired at a salary of \$95,000.00 per annum as a full-time employee of the KLWTD. The motion died due to lack of a second.**

**Commissioner Tobin moved to approve the District pay EJ Fishburn \$95,250.00 as a corporation, provided that Chuck Fishburn is the person performing the personal services as a contract amount as proposed. The contract should be clear that the cost of insurance and benefits would be born by EJ Fishburn by including an insurance provision.** Discussion ensued on automobile, workers compensation and professional liability insurances. **Commissioner Wilkinson seconded the motion for discussion.** Commissioner Wilkinson personally wants to see Mr. Fishburn as general manager, however he is concerned with how additional staff would be hired. Commissioner Wilkinson wants to see GSG phased out. Discussion continued on hiring a secretary/clerk, contracting for management services and compensation. Chairman Bauman was opposed to the amount of compensation. Chairman Bauman requested a roll call vote.

<b>Commissioner Beaty</b>	<b>Not Present</b>
<b>Commissioner Brooks</b>	<b>No</b>
<b>Commissioner Tobin</b>	<b>Yes</b>
<b>Commissioner Wilkinson</b>	<b>Yes</b>
<b>Chairman Bauman</b>	<b>No</b>

**The motion did not pass due to a tie vote.**

Mr. Dillon stated that as the Board Attorney he was required to express his concern with Mr. Fishburn acting as general manager on the Board's behalf without an agreement in place. Commissioner Brooks suggested hiring Mr. Fishburn on an interim basis as an hourly employee.

**Commissioner Brooks moved to approve that Mr. Fishburn be hired on an interim basis as a contractor for \$80,000 per annum until the issue is brought to the Board for possible reconsideration. The motion died due to lack of a second.**

Mr. Robert Burt requested to make public comment and the Chair granted the request. Mr. Burt stated that he would suggest hiring Mr. Fishburn at \$100,000 as an employee so that the projects could get moving. He is concerned with getting the job done and making it happen. He would like to provide good news to the KLTV residents at the July 22<sup>nd</sup> meeting. He is concerned that the Board is not moving forward on the projects and it is the Board's responsibility to do so.

**Commissioner Tobin renewed his motion at \$95,000.00. The motion died due to lack of a second.**

**Commissioner Wilkinson moved to approve Mr. Fishburn at \$99,000.00 annual as compensation for either a contract or District employee to be decided at the next meeting. The motion died due to lack of a second.**

Chairman Bauman recessed the meeting at 7:35 p.m.  
Chairman Bauman reconvened the meeting at 7:50 p.m.

Chairman Bauman stated that he was prepared to call the item at an impasse and table it until a future meeting.

**Commissioner Brooks moved to approve hiring Mr. Fishburn at \$50.00 per hour with a cap of 40 hours a week as a contractor until June 19, 2004. Commissioner Wilkinson seconded the motion for discussion.** Commissioner Brooks asked if this would bind the actions of Mr. Fishburn as general manager. Mr. Dillon stated it would and Mr. Fishburn would be considered a temporary employee until an agreement could be reached. The question was called and Chairman Bauman requested a roll call vote.

<b>Commissioner Beaty</b>	<b>Not Present</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>Yes</b>

**The motion carried.**

## 2. Approval of the pending payments list

Commissioner Wilkinson asked if WEC was approaching the full contract amount for their services. Mr. Castle stated that WEC would work for the duration of the project at the contracted amount. Discussion ensued on the terms of the contract and the fact that WEC is being paid for inspection services that have not begun. Commissioner Tobin requested a letter informing the Board of the verbal agreement that WEC is billing for half of the contracted amount per month.

**Commissioner Wilkinson moved to approve the pending payments list.**

**Commissioner Tobin seconded the motion.** Commissioner Brooks asked why there were no GSG invoices included. Mr. Miles stated that none were received for payment this cycle. Commissioner Brooks questioned what GSG has been doing for the KLWTD. Mr. Miles stated that the time sheets have been sent to each Board member by email for all service contracts along with invoice copies and expense reimbursement requests. Discussion ensued on GSG reporting estimated hours to Chairman Bauman under terms of the GSG amended contract. It was the consensus of the Board that Mr. Miles is to send an email summary of the basic GSG administrative hours to Chairman Bauman and copy all of the Board. **All were in favor of approving the pending payments list and the item was unanimously approved.**

## 3. Approval of the KLWTD making Direct Equipment Purchases

The item was tabled and had been discussed earlier in the meeting. The Board requested a procedure for making direct purchases and that a resolution setting the procedure be placed on the next agenda for action.

## 4. Approval of the Public Notices for the meetings scheduled from July through September 2004

**Commissioner Brooks moved to approve the notices for the July and August meetings only. Commissioner Tobin seconded the motion. All were in favor and the item was unanimously approved.**

## 5. Approval to reduce the number of Mylar copies required for submittal

**Commissioner Brooks moved to approve the reduction to the number of Mylar copies required for submittal. Commissioner Tobin seconded the motion. All were in favor and the motion was unanimously approved.**

## H. General Manager's Report

### 1. Discussion of DCA Grant Agreement for FEMA Project 1249-25

Mr. Dillon presented the agreement. He stated there are several housekeeping items that need to be addressed. Mr. Dillon forwarded the Board an email following up on the conference call that was held to address the concerns of the Board. The conveyance of the open space was discussed and Mr. Dillon stated that there is an

opportunity to increase the amount of space to be used by the KLWTD if needed. Mr. Dillon noted that all items outlined in the memo have been addressed. He stated that Mr. Fishburn is on board with the issue and will be ready to take over on the mitigation issue. Discussion ensued on the site mitigation and if Haskell is to clear the lot under terms of the contract.

Mr. Dillon and Mr. Fishburn are developing mitigation costs to submit to Murray Nelson to be considered by the County for payment. The Board requested the agreement be placed as an action item on the June 16, 2004 agenda.

Discussion concerning the conveyance agreement, the biological report and the finding of non-significant impact ensued. Commissioner Brooks stated that he was concerned with portions of the mitigation letter submitted by the FKA in particular the replacement of dead trees at a rate of three to one. It was noted that the biological opinion doesn't require it and that the County may have a transplantation requirement but it should be reviewed and it could be negotiable.

## ACTION ITEM

### I. Engineer's Report

#### 1. Status report for the period ending May 25, 2004

Mr. Castle presented the report and asked if there were any questions. Commissioner Brooks asked about the design review for the 99% drawings. Mr. Castle had not received the 99% percent drawings but a meeting would be scheduled no sooner than 7 days after their receipt.

Commissioner Wilkinson quested the vacant lot issue. Mr. Castle stated that he is waiting for the true vacant lots and will update the Board in the future.

#### 2. Update on Influent Characteristics

Mr. Castle presented the letter from Haskell concerning influent characteristics. He stated that they might be stronger than defined in the RFP and preliminary design report. The letter presented explained how the higher loadings would be handle.

Commissioner Wilkinson questioned the status of the Calusa Camp Resort issue. He had requested it be an agenda item and it was not placed on the agenda. Discussion ensued. It was the consensus of the Board to have a continuing commercial connection (Calusa Camp Resort) status update under the general manager's report until the issue was resolved.

### J. Public comment

No one present wished to address the Board.

### K. Commissioner's Items



1. Discussion of the CFO and Clerk positions – Chairman Bauman

Chairman Bauman stated the Board must decide if the manger would be responsible for hiring additional staff or if it should be a joint decision that includes the Board. Mr. Fishburn believes that until a secretary/clerk is hired he will have difficulties administering his duties. Commissioner Tobin suggested that Mr. Fishburn be given authority to advertise for a secretary/administrative assistant for general clerical duties and he should make a recommendation of who to hire at the June 19, 2004 meeting. Commissioner Wilkinson agreed.

No Board action was taken on this item.

2. Discussion for possible action of the manager/manager-select and attorney to contract for temporary office space on a month-to-month tenancy not to exceed \$1.25 per square foot and a total cost of \$1,000 including utilities monthly- commissioner Wilkinson

Mr. Fishburn informed the Board that he has entered into a week-to-week rental at his own risk in the temporary storage facilities. Commissioner Tobin and Mr. Fishburn will meet with Bank of America to discuss renting a space with them.

No Board action was taken on this item.

3. Discussion for possible action of the manager/manager-select and attorney to contract for communications (telephone/DSL) capability transferable within the island of Key Largo – Commissioner Wilkinson

No Board action was taken on this item.

Commissioner Wilkinson excused himself from the meeting at 9:10p.m.

Commissioner Tobin stated that he believes the manager should be given the authority to take action on items relating to the administration of his duties.

Commissioner Brooks excused himself from the meeting at 9:14p.m.

4. Discussion for possible action of the authority of the manager/manager-select to spend not-to-exceed \$5,000.00 for office startup equipment, fixtures, furniture, supplies and other office needed materials – Commissioner Wilkinson

No action was taken on this item.

5. Discussion for possible action of directing the outgoing manager and staff to prepare a comprehensive list of accounts payable and receivable, insurances, mandated reports with submission dates, etc. accompanied with a contact person, email and mailing address, telephone number and other necessary items necessary for the transition to local management. The intent is that all expected services, tasks, accounts, contacts, etc. necessary for the proper

management of the KLWTD whether major or minor be disclosed promptly to the incoming manager and the District – Commissioner Wilkinson

No action was taken on this item.

6. Update on past agenda items:
  - a. FEMA FONSI Status
  - b. Water Quality Testing
  - c. Resolution of \$100K Loan repayment issue
  - d. Site mitigation
  - e. KLP vacant lot resolution
  - f. Project request for FEMA deadline extension
  - g. CDBG Grants and/or funds for private connections
  - h. Procedures
  - i. Web Site Development

No action was taken on this item.

7. Meeting Adjournment

Chairman Bauman adjourned the meeting at 9:14 p.m.