

MINUTES

Key Largo Wastewater Treatment District (KLWTD) Board of Commissioners Meeting



July 21, 2009
98880 OVERSEAS HWY, KEY LARGO, FL 33037

The Key Largo Wastewater Treatment District Board of Commissioners met for a regular meeting at 4:00 PM. Present were Commissioners Norman Higgins, Andrew Tobin, Charles Brooks, Robert Majeska, and Chairwoman Susie Hammaker. Also present the General Manager Charles F. Fishburn, District Counsel Thomas Dillon, District Clerk Carol Walker, and other appropriate District Staff.

Commissioner Brooks led the Pledge of Allegiance.

ANNOUNCEMENTS

Chairwoman Hammaker reported that Mayor Achenberg, Village of Islamorada, had requested that she announce that he would like to have a five on five public meeting with the Board of Commissioners, Key Largo Wastewater Treatment District, in October to discuss an agreement for a portion of Islamorada's wastewater to be treated at the KLWTD facility.

Chairwoman Hammaker moved her agenda item, "Policy Item: conduct inside and outside District Office" to an announcement. See Exhibit "A".

APPROVAL OF AGENDA

Chairwoman Hammaker moved the following up to the front of the agenda, Item 8 (Unique Properties) and District Counsel, Thomas Dillon's back up material be reviewed at the same time along with the General Manager, Charles Fishburn's report on the Staff recommendations.

Commissioner Brooks stated that he was dismayed getting the agenda with so many items without the back up at the same time. He does not feel that he can make an informed decision when he gets the backup material at the meeting. Commissioner Brooks stated that it is not considerate to the public as well as the Board members to be making decisions on issues with the details being put in front of them at 4 PM when they sit down for the meeting

Commissioner Tobin and Commissioner Higgins agreed with Commissioner Brooks.

Mr. Fishburn would like to remove Item 2 (Basin C-4 Change Order) and Item 4 (Wade Trim Work Authorization). He would also like to move the Financial Report to the front of the agenda because Mr. Waits will be leaving the meeting.

Motion: Commissioner Brooks made a motion to approve the agenda as amended. Commissioner Higgins seconded the motion.

Vote on Motion

Member	Yes	No	Other
Chairwoman Hammaker	X		
Commissioner Higgins	X		
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Majeska	X		

Motion passed 5 to 0

FINANCIAL REPORT

Preliminary Administration and Construction Management Budget

Martin Waits, CFO reviewed his FY 2010 Preliminary Budget & 4 Year Financial Projection and Staffing Analysis.

Mr. Waits invited the Board to contact him with any questions or concerns about the FY 2010 budget.

Auditor RFP

Mr. Waits gave a report on the RFP for an Auditor. He explained that there were six very qualified responses. Five of the auditors' bids were within \$3,000. Grau & Associates received the highest total evaluation ranking of 94.3 points.

Mr. Waits will bring the recommendations to the Audit Committee on August 18, 2009.

Shelly Turlock presented the District with a \$452,000 check from the Army Corp of Engineers.

GENERAL MANAGER'S REPORT

Unique Properties

Mr. Dillon reviewed the following:

Subdivisions with roads that are not publicly maintained. We agreed that the decision whether to construct wastewater infrastructure within such subdivisions requires a case-by-case analysis. The first question is whether there are utility rights-of-way within the subdivision. If so, then the District already has the legal authority to construct wastewater infrastructure within the rights-of-way. However, even if the legal authority exists, there may be practical reasons not to construct infrastructure within a particular subdivision. For example, there may be physical conditions or obstacles that make construction extraordinarily costly. Further, if the density of developed parcels is very low, the cost to build infrastructure may be prohibitive. Government agencies enjoy a presumption of validity in their decision, and if they are rationally based, courts will generally not substitute their judgment for that of the agency. This is particularly true in budgetary decisions, where a very high level of deference is applied to legislative findings.

Therefore, a reasoned statement explaining the basis for a decision whether to build in a particular subdivision will generally be sustained by a reviewing court.

Gated subdivisions. We agreed that the mere presence of a gate is not a very strong justification for not building within a subdivision, especially in the absence of reliable data as to the probable cost of dealing with the gate. However, the District may validly impose a liquidated service fee (not part of the assessment) for each instance in which the District or a contractor requires access to the gate but is not able to gain entry.

Condominiums, including platted condominiums. Condominiums are not the same as subdivisions. Under the Monroe County Code, a wastewater authority may, but is not required to, construct infrastructure within a condominium development. The District policy of not constructing infrastructure within condominium developments is presumptively valid. If the District chose to adopt a case-by-case policy for construction of infrastructure within condominiums, similar to that for subdivisions, it could reasonably do so.

Grinder pump parcels. This term applies to all parcels that cannot connect to the District wastewater collection system via a gravity connection from the house or other structure, due to such factors as distance from the wastewater collection system or elevation problems. As a preliminary matter, the District possesses the discretion to design its system in a way that it considers to be cost-efficient. Therefore, the District is not required to extend a particular type of collection system, gravity, or vacuum, into an area if the District believes that the cost would be too high. Under 99-395 L.O.F. and the Monroe County Code, if the District offers connection to the central sewer system, the parcel owner must connect, even though the parcel already is served, or can be served, by an onsite sewage treatment and disposal system capable of treating wastewater to the applicable legal standard. Once the District decides what type of system to build, it can require the parcel owner to connect via a means that is compatible with the District facilities. Therefore, it can impose reasonable conditions on connection, such as installation of a grinder pump at the outfall from the house, and provision of power by the parcel owner to operate the grinder pump. The District can offer to install the grinder pump and lateral connection within an easement granted to the District by the parcel owner. The District can also offer to provide the grinder pump and materials for the parcel owner to install, subject to District inspection prior to connecting to the District collection system. The District can reasonably impose a higher assessment on the parcel owner in recognition of the fact that the required District investment for these parcels is substantially higher than for parcels served by gravity connection to the District infrastructure, so long as the assessment does not exceed the District cost of investment. The amount of the assessment can be calculated by any reasonable method.

Mr. Fishburn said that the Staff and Engineers have the ability to service the Unique Properties but it is up to the Board to make the decision if they are to be done, when to do them, and what to charge.

PUBLIC COMMENT

The following persons addressed the Commission: Burke Cannon, Tavernier, he spoke to the Board meeting with Islamorada, to do their due diligence. The following person spoke to the Unique Properties: Tom Gray, John Hammerstrom, George Nyman, Nicholas Mulick, Karen Beal, and Clement DeFillippi. Burke Cannon, Tavernier, does not want the District to deal with KLOR.

Commissioner Higgins would like the District to move forward with these properties.

Commissioner Tobin feels that gated subdivisions should be treated like regular neighborhoods.

Commissioner Majeska pointed out that the residents that have grinder pumps put on their property will have the cost of the regular assessment and the connection to the District financed over twenty years.

Ed Castle, Weiler Engineering, stated that they can bring back a preliminary design for review in September at the earliest.

Commissioner Brooks would only like to give direction to the Board tonight not set the cost to the property owner yet.

The Board directed the Staff to review each one of the Unique Property Areas and bring back each area, with a recommendation as to what should be put into the area and what the actual cost would be, for action.

Basin E-1, E-2, and F-1 Bid Results

Mr. Fishburn explained that staff is recommending the second to lowest bidder, Redland Company. Straightline, the low bidder, did not provide sufficient documentation to show they had experience with similar projects. Straightline was using an excess of 40% in Subs.

Motion: Commissioner Brooks made a motion to approve the Staff recommendation to reject the Low Bidder Straightline and to award the Basin E-1, E-2, and F-1 Bid to Redland Construction Company. Commissioner Tobin seconded the motion.

Vote on Motion

Member	Yes	No	Other
Chairwoman Hammaker	X		
Commissioner Higgins	X		
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Majeska	X		

Motion passed 5 to 0

Basin I Vacuum Station Site

Commissioner Tobin does not want to purchase all of the White Rhino property. He would like to save the money and buy half of the property. He does not want to buy more than vacuum station property.

Commissioner Higgins wants the District to consider the KLOR property because of the lower cost.

Commissioner Majeska does not want to purchase the KLOR property.

Commissioner Brooks does not consider the KLOR a good deal because it could lead to more legal problems.

Chairwoman Hammaker does not want to purchase the KLOR property and would like to purchase all of the White Rhino property and sell part of it at a later date if necessary.

Motion: Commissioner Brooks made a motion to authorize staff to negotiate with the White Rhino property owners to purchase the full lot at the price agreed upon or if it can be negotiated to purchase half of the property or the necessary amount of the property needed if the owner is willing to sell it. Commissioner Majeska seconded the motion.

Vote on Motion

Member	Yes	No	Other
Chairwoman Hammaker	X		
Commissioner Higgins		X	
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Majeska	X		

Motion passed 4 to 1

Grant Consultant Agreement

Mr. Fishburn explained that the contract has a \$3,000 limit.

Mr. Waits told the Board that this may help the District get a grant for the Unique Properties.

Motion: Commissioner Majeska made a motion to approve the Grant Consultant Agreement with Dolphins Software Inc. Commissioner Tobin seconded the motion.

Vote on Motion

Member	Yes	No	Other
Chairwoman Hammaker	X		
Commissioner Higgins	X		
Commissioner Tobin	X		
Commissioner Brooks		X	
Commissioner Majeska	X		

Motion passed 4 to 1

FDEP Consent Order

Mr. Fishburn told the Board that there are sixty three package plants on the Island of Key Largo. Four of them may not have central sewer service by 2010.5.

Mr. Fishburn reported that if a package plant owner does not get a joint consent order with the FDEP then they will not let the package plant owner go beyond 2010.5 and they have to modify their plant to BAT by next year.

Mr. Dillon submitted the following on the FDEP Consent Order

At your request, I have reviewed the draft settlement agreement proposed by the Florida Department of Environmental Conservation.

As we have discussed, I strongly recommend against entering into the proposed agreement because it would expose the District to penalties if the District fails to complete the wastewater infrastructure by the deadline in the agreement.

Ch. 99-395, Laws of Florida, which imposed the 20010.5 deadline to meet new wastewater treatment standards, did not impose any penalties on government entities who failed to complete wastewater infrastructure development by any particular date. There is no other statutory authority for such penalties, and I believe that the District would make a serious error by voluntarily subjecting itself to them.

In essence by entering into this agreement for the benefit of a few package plant owners, the District is subjecting itself, and its customers, to possible penalties. Although I believe that there is little likelihood that the District would fail to complete its system by the agreement deadline, I see no benefit to the District or its other customers that would justify assuming the risk of penalties. On the contrary, in my opinion, entering into these agreements would be tantamount to an admission by the District that it is in violation of FDEP-administered laws.

I render no opinion as to the authority of FDEP to enter into settlement agreements with package plant owners, requiring them to connect to the District facilities. However, I note that there is no such authority in the absence of a settlement agreement under which FDEP may require package plant owners to connect to the District. In my opinion, it is not necessary for the District to be a party to such agreements in order for them to be effective as to the package plant owners.

Because I do not believe that the settlement agreement is authorized by law or in the best interests of the District, I have not, until now, undertaken a detailed review of the proposal. Following are my comments on the proposal:

In Paragraph 1, the agreement recites that FDEP has authority to enter into this agreement under Section 430.061(8) Fla.Stat. That statute gives the FDEP general authority to "Issue such orders as are necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings." That general authority does not give FDEP the authority to levy fines against the District.

Paragraphs 9 – 11 require the District to undertake activities that it has already undertaken, including retaining the services of an engineer to apply for permits, oversee construction, and oversee the completion of the regional treatment plant. This paragraph would only be logical if the District had not already done these things. Therefore, the paragraph falsely implies that the District has not done them.

In Paragraph 11, the agreement acknowledges that "the KLWTD is a party to this Settlement Agreement for the purpose of facilitating compliance with Department requirements by [Facility Owner] as set forth in this Settlement Agreement and that KLWTD is not in violation of Subsection 6(6)(b) of Chapter 99-395, LOF." In light of this acknowledgment, it is not clear to me why the District is subjected to potential penalties.

In Paragraph 12, the facility owner is given 180 days after notice from the District to connect to the District system. This is longer than the 30-day period required by law. This paragraph could actually result in the facility owner connecting at a later date than would otherwise occur under the District's normal procedures.

Paragraph 13 provides that if the District does not provide access to the regional treatment facility by the date provided, and FDEP does not grant an extension, the facility owner must construct a facility that meets the 2010.5 standards. There are no standards provided by which the decision to grant an extension will be measured, so I assume that the discretion of FDEP will be unconstrained by the normal administrative rules.

Paragraph 15 imposes on the District reporting requirements not otherwise required under existing law.

Paragraph 19 imposes a presumption that any delay, including delay arising out of litigation to which the District is not a party, is within the District's control. This provision alone would be sufficient for me to recommend against entering into the agreement.

In Paragraph 28, the District voluntarily subjects itself to administrative penalties, civil penalties of up to \$10,000/day, and criminal penalties, none of which could be imposed against the District in the absence of this agreement.

In summary, I believe that it is not in the interest of the District or its residents and customers to subject itself to this agreement. It is my opinion that the District should refuse to enter into this agreement.

Motion: Commissioner Tobin made a motion to have the District Counsel prepare a resolution committing the Key Largo Wastewater Treatment District to a reasonable time table in proceeding forward with the wastewater project being completed by 2013 if not sooner. Commissioner Brooks seconded the motion.

Vote on Motion

Member	Yes	No	Other
Chairwoman Hammaker	X		
Commissioner Higgins	X		
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Majeska	X		

Motion passed 5 to 0

Change Order D-1

Mr. Fishburn explained that this is change order number six for an increase in asphalt quantities in Basin D Phase 1.

Motion: Commissioner Tobin made a motion to approve Change Order D-1. Chairwoman Brooks seconded the motion.

Vote on Motion

Member	Yes	No	Other
Chairwoman Hammaker	X		
Commissioner Higgins	X		
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Majeska	X		

Motion passed 5 to 0

BULK ITEMS

Pending Payments

Motion: Commissioner Brooks made a motion to approve the Pending Payments of July 21, 2009 contingent upon the availability of funds. Commissioner Tobin seconded the motion.

Vote on Motion

Member	Yes	No	Other
Chairwoman Hammaker	X		
Commissioner Higgins	X		
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Majeska	X		

Motion passed 5 to 0

LEGAL REPORT

Mr. Dillon reported that Pirates Cove requested someone from the District at the August 8, 2009 meeting. Commissioner Majeska will attend representing the District and he will also attend at no cost to the District.

ENGINEER'S REPORT

Monthly Status Report

Ed Castle of Weiler Engineering reported that Weiler will work from the design of Arcadis for the plant, not adopting Arcadis' plan saving a month of time.

COMMISSIONER'S ROUNDTABLE

Commissioner Brooks asked if Mayor Achenberg's request was personal or was it Board to Board, officially. It should be on the Boards agenda for full discussion and a vote.

Chairwoman Hammaker stated that Mayor Achenberg made the request to her to present his request and he would make the same request at the Village's Thursday night meeting.

ADJOURNMENT

The KLWTD Board adjourned the Board Meeting at 7:37 PM.

The KLWTD meeting minutes of July 21, 2009 were approved on August 4, 2009.

A handwritten signature in blue ink, appearing to be 'SH', written over a horizontal line.

Chairwoman Hammaker

A handwritten signature in blue ink, appearing to be 'Carol Walker', written over a horizontal line.

Carol Walker, CMC
District Clerk

D R A F T SFH 7-22-09

CONDUCT TEST POLICY

Regarding What we Think Say or Do as Representatives and Staff of the KLWTD:

1. Is it the LAW of the Land and reflective of Higher Wisdom?
2. Is it FAIR to the best use of others' time and the broader beneficial interests of our present and future customers?
3. Will it model and attract my best work, employee best work and the respect and praise of the District?
4. Will it generate GOOD WILL not just of the One but of the Many?

SOME HISTORY OF THE GOLDEN RULE

c. 1440 BC

Thou shalt not avenge nor bear any grudge against the children of thy people, but you shall love thy neighbor as thyself. (Leviticus 19:18)

551-479 BC

What you do not wish for yourself, do not do to others. (Confucius)

485-405 BC

Hurt not others in ways that you yourself would find hurtful. (Buddha, Udanavarga 5:18)

470-399 BC

Do not do to others that which would anger you if others did it to you. (Socrates)

c. 427-347 BC

May I do to others as I would that they should do unto me. (Plato)

384-322 BC

We should behave to others as we wish others to behave to us. (Aristotle)

5-30

Therefore all things whatsoever you would that men should do to you, do you even so to them: for this is the Law of the Prophets. (Matthew 7:12)

100

What you would avoid suffering yourself, seek not to impose on others. (Epictetus)

570-632

None of you will have faith until one desires for his brother what he desires for himself. (Muhammad)

1724-1804

Act as if the maxim of your action were to become by your will a universal Law of Nature. (Immanuel Kant)

1954

Is it the Truth?

Is it Fair to all concerned?

Will it build good will and better friendships?

Will it be beneficial to all concerned? (Herbert Taylor for Rotary International)

SFH Remarks on Test Policy 7-22-09

Someone has to stand up for the right thing to do: Hate and innuendo, criticism and anger, resentment, blame, ego trips and power plays appear to becoming the real pollutants of our Florida Keys. Many of us across the Keys say "Enough".

As elected officials and hired staff we have compliance responsibilities according to County, State, Local and Federal laws, rules and regulations having jurisdiction over us as employer, reviewer and approval of contracts, borrowing and purchases. The Board is the ultimate management oversight for the District and it is up to us to set policy and objectives for measuring management success and failure.

Up to now it has been a "pulling teeth" "toenail at a time" exercise to get our bare bones policy manual and employee handbook written. It is still incomplete.

We have done well however I believe we have a higher responsibility not yet addressed. This relates to our duty and obligation as administrators, managers, employers and employees AS HUMAN BEINGS.

As Commissioners and as staff representing KLWTD as a First Class Outfit, we have an ethical obligation in our dealings with others and how we expect others to treat us – to model safety, accountability, integrity, transparency, good citizenship and customer service.

We already have written board approved statements relating to accepting gifts, conflicts of interest, self dealing, obeying laws, confidentiality and record-keeping.

In most utility and corporate Codes there is also clearly written separation between staff and the managing board so that staff is protected from burdensome interference that might delay or impede their work. For example, Commissioners are a channel for citizen complaints which are then meant to be forwarded to the General Manager for his delegation to appropriate staff. I believe we need to do our job and let staff do theirs.

I have wrestled long and hard over this proposed draft policy offered as a Test of What we as Commissioners and Staff Think, Say or Do. You will see as part of my research a brief Three Thousand Year History of the Golden Rule. The fact that it must be repeated and repeated obviously means that human beings the world over have to hear its eternal truth over and over again.

So, my offering may fall on deaf ears. It may be ridiculed. So be it. We have important work to accomplish and time is of the essence.