

Meeting Minutes for 4/13/17

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, April 13, 2017, at 6:30 P.M., at the Community Center, 59 Arlington Ave., Kensington, California. A Regular Meeting (Open Session) followed.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Rachelle Sherris-Watt, President	A. Stevens Delk
Eileen Nottoli, Vice President	Karl Kruger
Sylvia Hacaj, Director	Anthony Knight
Len Welsh, Director	Mabry Benson
	Jim Watt
<u>Staff Members</u>	
Rickey Hull, IGM/COP	
Lynn Wolter, District Administrator	
<u>Press</u>	
Linnea Due	

President Sherris-Watt called the meeting to order at 6:34 P.M. and took roll call. President Sherris-Watt, Vice President Nottoli, Director Welsh, Director Hacaj, IGM/COP Hull, and District Administrator Wolter were present. President Sherris-Watt announced that Director Cordova would participate in the Closed Session only, by phone, from Brescia, Italy.

CLOSED SESSION PUBLIC COMMENTS

None.

The Board entered into Closed Session, by phone, at 6:34 P.M.

CLOSED SESSION

- a. Conference with legal counsel – anticipated litigation: The Board was briefed on matters involving significant exposure to litigation pursuant to California Government Code Section 54956.9(d)(2). Four items.
- b. Public Employee, discipline, or dismissal: The Board was briefed on personnel matters pursuant to Government Code Section 54957(b)(1). Four items.
- c. Public Employee Employment: Title – General Manager or Interim General Manager, The Board was briefed on personnel matters pursuant to Government Code Section 54957.

Prior to President Sherris-Watt calling the meeting to order, she introduced Officer Doug Wilson, who sang the National Anthem. All present stood and sang with him, and at the conclusion, President Sherris-Watt thanked him.

The Board returned to Open Session at 7:36 P.M.

President Sherris-Watt took roll call. President Sherris-Watt, Vice President Nottoli, Director Welsh and Director Hacaj were present. Director Cordova was absent from the Open Session.

President Sherris-Watt announced that there was nothing to report from Closed Session.

PUBLIC COMMENTS

Mabry Benson said that the Board was in the process of hiring a General Manager and that she hoped the Board was looking for someone with qualifications and how the candidates would handle critical issues facing the District: Financing and budget, trimming police costs, contracting, MOU negotiations, the Community Center, and the Public Safety Building reconstruction. She said that the Board's decision would need to be made after a presentation to the public and subsequent public comments and that the community should not be presented with a "take it or leave it" selection. She said the Board should present the option(s) to the public and then make the final decision at a subsequent meeting. She said major decisions needed thoughtful consideration and should not be made in a single meeting, especially when there's been no earlier public discussion. She said taking time would also allow the Board to go back to the candidate(s) to negotiate.

Karl Kruger complimented staff for putting the notes back into the financial statements. He said he was always looking forward to this information: It allowed everyone to be aware of issues, and it saved him time.

A. Stevens Delk said there had been three items on the Closed Session agenda: Two of them were conference with Legal Counsel, anticipated litigation – four items; and public employee, employment, discipline – four items. She asked if these were four new items or if they were a continuation of old items. She said she understood there was a limited amount of information that could be provided for Closed Sessions, but it seemed to her that the public deserved to know if, each month, the Board had another four sets of things with which to deal. She said she understood the third Closed Session item – it didn't need further clarification.

Anthony Knight noted that, at a prior meeting, Director Hacaj had called in, by phone, to participate. He said the agenda had provided the specific location from where she called: The firehouse in Arnold. He said he understood that doing this was a requirement of the Brown Act, so that, if someone had happened to be in Arnold at that time, they could have participated in the District's meeting. He said he was disturbed that Director Cordova had not provided her address for this evening's meeting. He said that Brescia, Italy was a big city and that he would like to know her exact address on the agenda and to know this was a public place. Mr. Knight asked if Director Cordova was on the phone. President Sherris-Watt responded in the negative. He concluded by saying this was not an attempt to embarrass Director Cordova.

Gretchen Gillfillan said that she'd lived in Kensington 59 years and that she preferred having one meeting a month, rather than two. She encouraged everyone to participate in the Friends of the Kensington Library Book Sale on Saturday, May 13th, from 9:00 A.M. – 5:00 P.M.

BOARD COMMENTS

President Sherris-Watt congratulated her fellow Board members because she'd asked all of them to hold meetings of their various committees and that, to date, there had been two meetings of the Finance Committee, two meetings of the Park Planning Committee, and one meeting of the Solid Waste Committee. She reported that the Park Grounds Committee and the Technology Committee had also met. She said this had been an impressive amount of work, and she thanked them for their commitment. Director Hacaj reported that the Emergency Preparedness Committee had not met but would do so shortly. She said she'd done research on this aspect of the District's business and apologized for the delay.

President Sherris-Watt extended special thanks to the Technology Committee and reported that A. Stevens Delk and David Bergen had done an exceptional job in getting everyone up to speed on the new sound system.

President Sherris-Watt reported that there would be a Closed Session meeting of the Board on the coming Saturday and that the monthly Finance Committee meeting would be held on April 26th. She added that Adam Benson of Public Law Group would attend to discuss issues regarding OPEB.

President Sherris-Watt said she'd been remiss by not including Director Cordova in the roll call. She reported that Director Cordova's health prevented her from participating in the Open Session. She added that the Board had attempted to contact Director Cordova during the Closed Session but had encountered technical difficulties. President Sherris-Watt noted that Director Cordova would be remotely participating in the Closed Session on Saturday and thus would not be accessible to any member of the public. Director Hacaj added that this was why Director Cordova's address had not been provided for the evening's agenda: She had planned to participate only in the Closed Session.

President Sherris-Watt welcomed the Board's new Legal Counsel, Ann Danforth, who received a round of applause. President Sherris-Watt reported that Ms. Danforth had many accomplishments, including having served as the City Attorney for Tiburon for almost 20 years.

Director Hacaj reported that the evening's Closed Session Item c (public employee employment – GM) and the Saturday Closed Session covered the GM process, and said she wanted to provide an update on that process. She said the Board had held at least three meetings at which it had discussed splitting the GM/COP position and that, at those meetings, the Board had enumerated the duties of the GM and the COP, which had then become incorporated into the Board's Policy and Procedures Manual. She reported that the Board was working with the management-consulting group within Public Law Group – in particular with a man named Bob Deis, who had been working with the Board on recruiting candidates for the GM position. She added that the job posting had been placed in numerous locations and publications and with various organizations. She said the Board had considered 14 resumes, interviewed five candidates, and would be interviewing two of those candidates further. She noted that the Board was working to have a GM in place by mid-May. She reported that there was more information the Board could provide: a list of skillsets and questions used during the interview process. She said the documents would be posted on the District's website and that, if the public had comments, they should get in touch with Directors. She concluded by saying the Board took seriously its responsibility to hire District staff.

Director Hacaj reported that, although the interview process for IGM/COP Hart had been done in a different manner, the tenor was now different – feelings in the community had been different at that time, with anger and frustration. She said this was no longer the case. She also noted that the interview process had been a public process and that this had caused some qualified candidates to withdraw – this was not the standard way in which to do things, especially when hiring someone at this level. She said, therefore, there would not be a public gauntlet for this candidate. She asked the public to trust that the Board was asking the right questions, seeking the right qualifications, and was being ably assisted by the consultant. A member of the public asked when the information would be on the website. Director

Hacaj responded, “By early next week.” She added that she would ask District Administrator Wolter to send it out.

President Sherris-Watt said that Bob Deis would attend the District’s April 27th meeting to discuss the process, speak about his qualifications, and how he guided the Board in finding qualified candidates.

Director Welsh said he wasn’t aware of the prior process having scared away any particular candidate. President Sherris-Watt responded that candidates had declined – one candidate had dropped out early and one had dropped out the day of the panel discussion. Director Welsh noted that the public process had been time-consuming and that the Board wanted to timely complete this process: The Board needed a GM and the candidates could get other offers. Therefore, he said he supported the process. He also said there had been good consensus in the Closed Session about the candidates, which he found heartening.

CONSENT CALENDAR

President Sherris-Watt asked if there were items anyone wanted pulled. Items pulled were Item e (Variance Report) and Item g (Solid Waste Committee).

Jim Watt said he agreed with Karl Kruger – it was nice to receive the footnotes in the budget. He noted that the first column in the document was incorrect: It was a repeat of the third column. He noted that the first column should reflect the increase of that month and that this made difficult to determine where the large increases had occurred. District Administrator Wolter responded that Mr. Watt was correct, she apologized for the error, and said it would not happen again. With respect to the budget, Mr. Watt said that line item 830 Legal costs had increased by \$31,000 in one month. He added that he hoped that the District’s new Legal Counsel would not be running up legal bills like this. As a member of the Finance Committee, Mr. Watt reported that the District was on track to possibly end the year with a budget surplus of \$200,000. He noted that this would be the third year in a row with a budget surplus. He said he had been pushing for an increase in reserves for some time and noted that part of the reason for the surpluses had been the increases in the Levy Tax Revenue and the reduction in Police expenses because the department was operating with one less officer.

President Sherris-Watt said she had a comment on the budget. She said that, for Account 562 Vehicle Maintenance, there was a note from the Fleet Manager about staffing levels and developing the next year’s budget. She said that, while she appreciated the annotations, some of them were editorializing a little bit. She said a better process would be that, if the Board had input from officers or staff that reflected on budgetary matters or policy, it probably would be better not to include it as a note but to make sure a separate email was sent. She said she hoped that IGM/COP Hull had been alerted, but if not, she hoped it was not just appearing in the report. Director Welsh said he disagreed – he thought it was valuable information. President Sherris-Watt said she didn’t disagree – she wanted to make sure it hadn’t only appeared here and added that it might be personal opinion. Director Welsh said he thought it was a “heads-up” – if the department returned to full staffing, it was going to have a wear and tear impact. President Sherris-Watt reiterated that she wanted to ensure that the comment didn’t appear only here.

Jim Watt asked to speak about Item g (Solid Waste Committee). He said he wanted to add an item to the list of things the committee on which the Committee would be taking action. He said that he’d been involved in discussions about the Bay View contract and that, in the contract, the District had agreed to increase the fee it would collect, from 5% to 7%. He noted that the District knew at that time, that it would be required to pay 3% to the County. He said an additional 2% would come to the District – the total to the District would increase from 2% to 4%. He said the rationale given at that time had been that the District didn’t know if the County’s fee percent would increase under the terms of a newly negotiated agreement – increasing the total from 5% to 7% was expected to provide a cushion. He noted that the draft MOU with the County indicated that the 3% fee would remain intact. He said it wasn’t necessary to continue to have the ratepayers continue to pay 4% to the District under these

circumstances and added that the Franchise Fee could be used only for the specific intent involved with the particular issue at hand. He said the annual amount the District was collecting at the 4% rate was about \$60,000. Over the term of the contract, he said that this would amount to a large sum, that this money could be used only for solid waste purposes, and that it would distort perceptions about what the District really had: The franchise fees would represent about \$60,000 of the District's \$200,000 surplus for the year. He asked Vice President Nottoli if she and her Committee would ask Bay View Refuse if it would consider reducing the franchise fees in exchange for reducing a future rate increase for Kensington's ratepayers. In response, Director Welsh said that the District could renegotiate the Bay View contract any time it wanted, to make that kind of switch, but that he thought it was premature to do so because the County could raise the fee it charged anytime it wanted, if it could document its cost increases. He added that he thought this was likely, given changes that could occur with legislation and waste disposal requirements. Director Welsh noted that it would behoove the District to accumulate a bit of a reserve, even though this reserve had restrictions on its use.

MOTION: Director Welsh moved, and Vice President Nottoli seconded, to adopt the Consent Calendar.

Motion passed: 4 – 0.

AYES: Sherris-Watt, Nottoli, Welsh, Hacaj NOES: ABSENT: Cordova

NEW BUSINESS

- 7a. Discussion of Wi-Fi policy for the Community Center. Vice President Nottoli updated and informed the Board about different possibilities for making Wi-Fi available to the users of the Community Center.

Vice President Nottoli reported that there was Wi-Fi service in the Community Center with HughesNet Satellite. She said the District had been looking into alternatives to the satellite service because it didn't work well in bad weather. She added that AT&T was an alternate but was a more expensive one. She noted that the HughesNet fee was \$182 per month and that AT&T was about twice this amount. She reported that the Wi-Fi password was "KensingtonCC," and that the Board would be monitoring the use of this over time. She said that, with others having the password, there would be no way to limit use, which could result in the District using its monthly allotment early in each month. This, she said, could cause the system to operate slowly. President Sherris-Watt asked if it would be possible to change the password. Vice President Nottoli responded in the affirmative and said it could be changed monthly. Director Hacaj asked if the password would be posted on the bulletin board or if it would be provided only for certain events. Vice President Nottoli reiterated that monthly usage would be monitored and that the monthly allotment was five megabytes. Director Hacaj said that, given the limited allotment, perhaps access should be limited to Board meetings. Director Welsh recommended beginning conservatively with this and then expanded access incrementally. President Sherris-Watt noted that youth groups might be excited to have access during their gatherings, especially because so many children carry cell phones now. She also suggested making the password available to KASEP teachers, the fly-fishermen, and fundraising groups. Director Welsh asked about what weather problems might impact the satellite. Vice President Nottoli responded that winter weather and summer fog could pose problems and reiterated that the satellite option was less expensive. She noted that, at the higher price, AT&T would provide more bandwidth. President Sherris-Watt suggested starting the process and the soliciting community input. Director Welsh asked if there were other providers to consider, such as Comcast. Vice President Nottoli responded that other providers would need to have a cable line. Director Hacaj asked if there was a draft policy to consider. President Sherris-Watt responded that this was for discussion only.

MOTION: Vice President Nottoli moved, and Director Welsh seconded, that there be limited distribution of the password and see how that works out and see what the usage is over time and that, in the meantime, they would continue to explore other options to Hughes.

Motion passed: 4 – 0.

AYES: Sherris-Watt, Nottoli, Welsh, Hacaj NOES: ABSENT: Cordova

- 7b. Review and possibly adopt the Amended Memorandum of Understanding between the KPPCSD and Contra Costa County for meeting the requirements of the California Integrated Waste Management Act of 1989.

President Sherris-Watt reported that this Amended Memorandum of Understanding dealt with requirements related to the District's solid waste contract and what fees the District needed to pay to the County. She reported that the District currently paid a franchise fee of 3% of Bay View's gross receipts to the County and the new MOU did not show an increase in those rates.

Jim Watt said that he'd done contracts for almost 40 years for a living and that he enjoyed reviewing such things. He said that he wanted to repeat something he'd said at previous meetings: When there were agenda items like this, which involved a sum of money – in this case 3% on \$1.5 million, or \$45,000 per year, there should be a summary about why the District was doing this contract, the background of the contract, and the cost of it. He said he'd like to see a summary of anything coming up for final approval. With respect to the contract, he said that, on Page 2 Item K, it said that the 1997 MOU was scheduled to expire on September 1, 2016. He said this bothered him because he could remember that, around that time, former IGM/COP Hart had said the District needed to work on the contract and get it reinstated. Because the contract had expired, he said the proposed MOU wasn't an amendment: It was a new contract. Therefore, he said he would prefer to see the word amendment deleted.

Mr. Watt said he was bothered that there was a contract in the agenda packet and it contained reference to an Exhibit B, but there was no Exhibit B attached. He said he wanted to see what this exhibit contained because it contained the District's obligations to the County and the State.

Mr. Watt said that, on Page 8 of the MOU, there was discussion about the term of the contract; specifically the term was September 1, 2016 through August 31, 2023, but later, the document said the contract would automatically terminate one year after the termination of the Franchise Agreement, unless the District entered into a new franchise agreement that provided for the effective implementation of the obligations.

Mr. Watt said the most important thing was that, the prior contract – which had been entered into in 1997 and had run for 19 years, had included reference to Bay View Refuse and the restrictions imposed upon that service provider. He said that Bay View Refuse had agreed to comply with the applicable terms and that Bay View had been a signatory to this document. Therefore, he said Bay View should be a signatory to this proposed MOU. He said that the prior agreement contained many provisions with which the District had to comply and that there was probably little information going to the County on a quarterly basis. Vice President Nottoli clarified that this was diversion rate information. District Administrator Wolter responded that, under the prior agreement with Bay View Refuse, Bay View Refuse sent that information directly to the County. Director Welsh said that there was a perfectly fine relationship among Bay View, the County, and KPPCSD and that if the County wanted something from Bay View, the County would go to the service provider and ask for it and that if Bay View needed something from KPPCSD it would call District Administrator Wolter. In sum, he said everything was working fine, though it hadn't always been that way in the past. Director Welsh added that the Bay View contract contained provisions requiring it to comply with County provisions. He noted that the County had said Bay View didn't need to sign this proposed MOU.

Mr. Watt said that, since 1997, the District had been contributing 3% to the County. He said that he wasn't sure how that number had been derived and that it was confusing how the County would justify changing this. He said it was likely that the KPPCSD was paying more than the amount of the costs the County was incurring on the District's behalf. Director Welsh responded that the County hadn't said

how the amount had been calculated but that it was clear that the County was talking about its administrative costs. He added that an inquiry could be made to see how well the County justified it. Mr. Watt noted that, perhaps, there could be an opportunity to reduce this percentage based on the County's actual costs.

President Sherris-Watt said that, for brevity, the Bay View contract had not been included in the Board Packet, that this complete contract was on the District's website, and that this contract contained the amendments and exhibits referred to in the proposed MOU with the County.

A.Stevens Delk said that the previous contract with Bay View had actually ended in 2015, and the concurrent one with the County had ended one year later. She said this one-year lag had probably been a failsafe on the County's part so that, if the contract with Bay View had ended, the County would have had one year to collect its money. She said that the proposed MOU would end in the same year as the Bay View contract and that the language about extending one year beyond the Bay View contract's termination probably had the same intent as the prior County MOU – to ensure it didn't get shortchanged.

Ms. Delk said the proposed MOU mentioned the 3%, but it didn't mention when the District had to pay it to the County. She added that the prior fiscal year had been the first year of the Bay View contract with the District, which switched from the Bay View paying the County directly to Bay View paying the District and the District then paying the County. She said that, for one year, the District hadn't paid the County, but that, in September 2016, there had been a \$35,000 reduction in the revenue the District had received from Bay View. She said that, at that time, she'd asked what had happened to the revenue and that the explanation provided by District Administrator Wolter and the District's CPA had been that this had been the franchise fee money the District had had to send to the County. She said she didn't think this should have been treated as a reduction in revenue; instead, it should have been treated as an expense. She reiterated that the contract didn't specify when the District had to pay the County. She said the prior Bay View contract had said that the Bay View would pay the District every month, based on the gross receipts of the previous month. President Sherris-Watt responded that she thought IGM/COP Hull could answer this question. Ms. Delk continued by saying that Bay View billed ratepayers three times a year and that, during the first month following billing, about 70% of customers paid and that the rest of the customers paid over the next three months. She added that, in the middle of March, she had received a second notice from Bay View telling her she'd owe a \$20 late fee if her payment wasn't received by April 15th. She said such fees were not mentioned in the Bay View contract. Director Welsh encouraged Ms. Delk to raise her billing issues with the Solid Waste Committee.

IGM/COP Hull said he wanted to speak to the payment schedule: The District was sending the franchise fee to the County. He added that Bay View was sending the 7% to the District monthly and that, out of that money, the District calculated the 3% and then prepared a check to send to the County. Thus, he said the payments were being made monthly.

MOTION: President Sherris-Watt moved, and Director Welsh seconded, that the Board authorize Vice President Nottoli to execute this MOU, with clarifications: Talk to the County to find out if they meant the MOU to go until 2024, rather than 2023; obtain clarification from the District's Legal Counsel concerning 2.9 on the contract regarding the provision of pick-up for the Library and the Community Center to ensure that the District's in legal compliance in requesting that service; and ask the Committee to look at hard numbers for reducing the franchise fee and how that reflects on ratepayers' bills.
Motion passed: 4 – 0.
AYES: Sherris-Watt, Nottoli, Welsh, Hacaj NOES: ABSENT: Cordova

After he'd seconded the motion, Director Welsh said he didn't think the cost of collecting garbage from the County would amount to much money. He said IGM/COP Hull had gone to the Library to

determine the volume of garbage generated there, but he couldn't find a can. Director Welsh suggested that someone could talk to the Library to find out what its disposal situation was.

Following Director Welsh's comment, Director Hacaj asked Legal Counsel, Ann Danforth, to address comments that had been made by the public that she might find of concern.

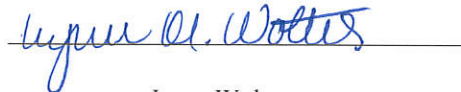
**MOTION: President Sherris-Watt moved, and Director Hacaj seconded, to adjourn the meeting.
Motion passed: 4 – 0.**

AYES: Sherris-Watt, Nottoli, Welsh, Hacaj NOES: ABSENT: Cordova

The meeting was adjourned at 8:37 P.M.



Rachelle Sherris-Watt
KPPCSD Board President



Lynn Wolter
District Administrator