

Meeting Minutes for 11/10/16

A Regular Meeting (Open Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, November 10, 2016, at 7:30 P.M., at the Community Center, 59 Arlington Ave., Kensington, California.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Simon Brafman
Rachelle Sherris-Watt, Vice President	Linda Lipscomb
Chuck Toombs, Director	Karl Kruger
Patricia Gillette, Director	Celia Concus
	Mabry Benson
	A. Stevens Delk
	Jim Watt
	David Bergen
<u>Staff Members</u>	Catherine de Neergaard
Kevin Hart, Interim General Manager/Chief of Police	Gail Feldman
Lynn Wolter, District Administrator	
<u>Press</u>	
Linnea Due	

President Welsh called the meeting to order at 7:33 P.M. President Welsh, Vice President Sherris-Watt, Director Toombs, and Director Gillette were present. Director Cordova was absent.

PUBLIC COMMENTS

Linda Lipscomb addressed the Directors and the newly elected Directors. She thanked Directors Gillette and Toombs for their years of service on the Board. She said that these Directors had taken on myriad responsibilities to help the community and that, upon completion of their terms, they were leaving a legacy of accomplishments. She thanked them for their sacrifice of time and energy. She said their legacy included a level of almost unparalleled public safety, a sound financial position, and managing well through various crises. She said that the community was better off because of their service and sacrifice and that many, including herself, extended their heartfelt gratitude. She said that Directors Gillette and Toombs had a depth of knowledge about the sometimes-arcane laws associated with running the District, that they were very knowledgeable about other aspects of running the District, and that she hoped they would share this knowledge in the future, if called upon.

Ms. Lipscomb thanked Dave Spath, Director Toombs, and the newly elected Directors for having run for public office and said that Kensington residents wished them the very best going forward. She noted that these individuals must feel passionate about Kensington to have sacrificed their time to run for these uncompensated but honorable positions. She said to the newly elected Directors that they would be exposed to public accountability and criticism. She asked them to consider that change for change's sake could lead to immeasurable consequences, in terms of loss of local control over safety and the wellbeing of the community. She encouraged them to dive deeply and unemotionally into the facts and the verifiable aspects of the District's finances. She said the quality of life in Kensington had been

largely maintained by Kensington's local police force, which attended to the community's daily needs. She urged them not to sweep the District into a larger structure because it might seem to be simpler or might satisfy the agenda of some of the community's more vocal critics. She noted that contracting out for services showed what happened when the community relinquished its independence. She said that contracting out might look promising at the beginning but could lead to Kensington paying a disproportionate share of a neighboring city's budget; it could lead to no control over the underlying fundamentals of the arrangement and; going forward, it could be very difficult, if not impossible, to reverse. She said that the KPPCSD's governance was where "the rubber meets the road" in local governance and that Kensington wished them well on their journey.

Simon Brafman thanked Ms. Lipscomb for the things she'd said and noted that he wanted to echo many of her comments. He congratulated the new Directors and noted how hard they'd worked in winning. He thanked all the members of the Board, especially Directors Gillette and Toombs. He said he appreciated the work they had done. In particular, he thanked them for establishing the Ad Hoc Committee, which had increased community involvement in decisions that would be made.

Karl Kruger said he echoed the comments made by Ms. Lipscomb and Mr. Brafman. He presented Directors Gillette and Toombs with gifts for the services they'd rendered and the good job they'd done. He said he hoped the gifts would remind them of the people they'd met and the relationships they'd established, and he thanked them for their service.

Mabry Benson thanked everyone for running and serving. She asked if the Board would let the Ad Hoc Committee officially disband so it could be free of Brown Act restrictions and have a party. She asked how much the legal opinion about amending the Policy and Procedures Manual to allow the three-fifths vote had cost. She noted there was a proposed bylaw amendment on the agenda, but it wasn't the same one that had been on the agenda in July, which had been to start the meetings at 6:00 P.M. She asked if that proposed amendment was just being deferred.

Celia Concus said she was returning to questions that had been raised several times about the CalPERS audit but for which answers hadn't been provided. She noted that the audit's date was December 23, 2015 and that, in IGM/COP Hart's correspondence with CalPERS dated January 6, 2016, he had appealed several items in the audit. She asked when the Board had been notified of the audit. President Welsh responded that he'd received an email in January but hadn't paid attention to it. He said that he understood that CalPERS audited state agencies regularly and that when he'd seen the audit, he hadn't seen anything particularly controversial. He said the one thing the District needed to contemplate was what was called an "observation," not a "finding," which had to do with combining police time with non-police time. He said that this was something the District needed to deal with but that he was pretty confident that, when CalPERS was done, it would agree that the GM/COP position should qualify for the full-time police retirement benefit. Ms. Concus asked when President Welsh had actually read the report. He responded he had done so about a month earlier. She noted that this had been after Mr. Hart had submitted his appeal. She asked what measures had been taken to correct inaccurate reporting of the GM/COP as a full-time safety employee. President Welsh responded that he didn't think it had been inaccurate. He added that he thought CalPERS' perspective was wrong because the GM/COP was on call 24 hours a day to respond to any police emergency, which was a big responsibility, and made it, in his opinion, 100% safety. Ms. Concus said that what she was getting at was that an employee of the District, IGM/COP Hart, had appealed items in a CalPERS audit and that members of the Board didn't know he had done so. President Welsh responded that the Directors couldn't know everything.

BOARD COMMENTS

Director Gillette thanked people for their nice comments and said this would be her last meeting as a Director. She said she wanted to:

- Thank her fellow board members, including Linda Lipscomb and the late Tony Lloyd, with whom she had served between 2012 and 2014.

- Thank Director Toombs who had dedicated his time, energy, and intelligence to the community and who had been well prepared and interested in doing the work of the District.
- Thank David Spath, who had become involved in the most critical issues facing the District long before he had decided to run for office and who had dedicated time and energy to the District's financial issues and to attending KPPCSD meetings for the past several years.

She said:

- Director Toombs and Dr. Spath epitomized the unselfish, solution-oriented public servants the community needed, and the community owed them a debt of gratitude.
- The Kensington she had been involved with during the first 30 years she and her family had lived in the community had been filled with community spirit, positive thinkers, and problem solvers.
- When she had started reading the Outlook in 2011 about the divisiveness on the Board and had started attending meetings she had become concerned about the community and had decided to run for the Board, thinking she could make a difference.
- During the four years she had served on the Board, it had accomplished quite a bit:
 - Resolved the lawsuit brought by constituents against the District.
 - Negotiated two contracts with the police officers, the last of which required them to pay into their health and pension plans.
 - Honored constituents' request that the Board not change garbage haulers and negotiated a favorable contract with Bay View.
 - Made a smooth transition to a new GM/COP with Kevin Hart.
 - Dealt swiftly and effectively with Mr. Hart's sudden decision to resign.
 - Created a citizen's committee of highly qualified individuals to evaluate the various options for restructuring the District.

She said she had met wonderful people and that she had found most of the work interesting, challenging, and uplifting. But, she said the prior two years on the Board had often been frustrating and depressing because things had fallen into a culture of fear and mistrust. She noted that the fall had been fueled by some of the events that had occurred during her tenure and had been the product of the behavior of some of the citizens and by some of her fellow Board members. She said that there were residents who came to the meetings claiming that the sky was falling, basing their comments on selected facts, some of which were real and some that weren't, in order to support their desired outcome. She noted that these individuals sold fear but no solutions. She said there was a culture of dividing people, based on assumptions of what they stood for, with whom they were aligned, and on their assumed agendas. She said the 2014 campaign theme had been an "us versus them" one that became a self-fulfilling prophecy when the Board composition changed in 2014, with the new Board members expecting they would be treated as "outsiders." They rejected most attempts to work together; they formulated their positions in advance of Board meetings; they voted predictably together on most issues and; they promoted the "outsider culture" by allowing people to make false public statements that they were excluded or prevented from obtaining information on various issues and then sitting silent rather than correcting them. She said this was shameful and unforgiveable.

She said she also had been disappointed by Directors who had used their positions to pursue personal agendas and vendettas and by going public with what were now known to have been exaggerated and unproven statements. She said these irresponsible actions had wasted precious time, energy, and thousands of District dollars on matters that were made up or overblown. She noted that his had tarnished the community's reputation. She acknowledged that she had made mistakes in judgment and had failed to pay enough attention to some important issues. She apologized for these and said these were parts of her performance she wished she could change.

Director Gillette said that the volunteer job of serving as a Director was not easy and that it involved a lot of legal principals and statutory requirements that many in the community didn't understand or chose to ignore. She said this lack of understanding how the Board worked was at the heart of much of

the criticism regularly lobbed against the Board by some in the community. She said the way in which the Board and the community interacted needed to change:

- Citizens needed to stop the personal attacks, insults, snide remarks, and nasty comments.
- Members of the public and other members of the Board shouldn't continue to assume bad intentions instead of good ones.
- Board members shouldn't continue to waste community assets on specious investigations or personal slights.
- Board members needed to stop treating employees, outside consultants, and attorneys so poorly that the District lost the high quality talent it needed.
- Board members needed to stop coming to meetings looking for ways to be offended.

Director Gillette urged the new Directors to look to the broader implications and consequences of their actions; to assume they would reach consensus as a Board; to act in good faith with the best interests of the entire community in mind; to treat employees, consultants, and attorneys with respect and; to commit to being the guardians and advocates of the community's reputation and values. She urged those who attended the Board meetings to stop the nastiness, sarcasm, polarizing and mean spirited personal attacks. She urged those not attending meetings to do so and to get involved because the decisions being made by the Board would be making would affect residents' daily lives. Director Gillette concluded by thanking those who had helped her and those who had devoted countless hours to the community as Directors and as participants and by extending her best wishes and congratulations to the new Directors.

Director Toombs thanked Director Gillette for her comments and said he endorsed them. He said that it had been his pleasure to serve for the prior eight years and that he was proud of his many accomplishments. He said that, as he prepared for the evening's final Board meeting, he wanted to share two comments that had been made by Hillary Clinton following the election:

- "To all the little girls who are watching this, never doubt that you are valuable and powerful and deserving of every chance and opportunity in the world to pursue and achieve your dreams. There are more seasons to come and more work to do."
- "All of us should never stop fighting for what is right. It is always worth it."

He said that, during his eight years, he had fought for what he had thought was right for the community and that he had few regrets as he left the Board. He said he had already privately congratulated the new Directors and said he wished them success. He said he had thoughts on what success might look like:

- The new and remaining Directors needed to heal the wounds of what had been a bitter, ugly, divisive and unnecessarily hostile campaign.
- They must work cordially with all Directors. He said that much had been said about the Board being dysfunctional and laying blame on Director Gillette, President Welsh, and himself. He said he did not accept all of that blame and wanted to point out that the dysfunction had its groundings in all five Directors, who seemed to fail at every opportunity to find consensus – putting political agendas ahead of the business of the people.
- The new Board must wrestle with the key issues set forth in the Ad Hoc Committee's report, and work with the community to see what it wants on all three issues. He said it would be a mistake for the five Directors to make a decision without getting input from the 5,000 residents. He said that one of the Directors had said, as the Ad Hoc Committee was being created, that there were no sacred cows – everything was up for review, from the top down. He said the Board would need to look at all three areas: whether the GM/COP position should be bifurcated; whether the community should contract out for police services; and whether the Fire District and the KPPCSD should be consolidated. He said the new Board had been handed a clean slate on which to write the future of the community's local governance.

Director Toombs said that the Board's success would be measured by how well it performed these tasks and that the community would judge them by how well they performed them. He said he had told one of the new Directors that this would be the hardest work they would ever do and that they would succeed if they put the interests of the entire community first. He concluded by saying that Secretary

Clinton had said that “our best days are still ahead of us” and that, with that in mind, he wished the new Board all the best.

Vice President Sherris-Watt thanked Directors Toombs and Gillette for their commitment and hard work. She said that, in the future, she hoped all would benefit from the depth of their knowledge, considerable intelligence, and calm reassurance given the events of the prior week. She asked that they continue to be involved, thanked them for their civic engagement, and wished them well.

President Welsh said he couldn't thank Directors Gillette and Toombs enough. He said that some of the effort involved with figuring things out was invisible and that running a small hamlet like Kensington was complicated – in part because everyone knows one another. He said he wanted to echo something Director Gillette had said: Director Toombs was an extremely hard worker. He said Director Toombs had spent a lot of time on very technical issues like CalPERS and the contract negotiations with the police. He said he appreciated Director Gillette's wonderful perspective and common sense. He congratulated the new Directors and said they would add fresh perspective and open mindedness to the Board.

President Welsh said this would be IGM/COP Hart's last Board meeting. He said that he was going to miss him and that this was going to be a big change. He thanked IGM/COP Hart for all his service and reiterated his thanks to Directors Gillette and Toombs.

STAFF COMMENTS

Former IGM/COP Hart said that it had been a pleasure and an honor to serve Kensington and that there were many wonderful residents. He said he hoped he'd made a difference and professionalized the police department. He said that he'd spent the prior few days working with the apparent new IGM/COP, that he'd worked to convey a lot of data to the incoming person, and that he thought this man would be a good addition to the community. He said he wished him luck.

Former IGM/COP Hart reported that the Kensington Community Council and Kensington Improvement Club had each pledged \$5,000 toward the new sound system. He said he hoped that the Kensington Property Owners' Association would also contribute \$5,000.

District Administrator Wolter said that when she had thanked former IGM/COP Hart at the Board's prior meeting, she had failed to thank his wife, Susan. She said that Susan was a retired police officer and that she had come to the office, as a volunteer, and helped organize dozens of police files – not District files, for which District Administrator Wolter said she was responsible. She noted that Mrs. Hart had come to the office at least a dozen times and had spent several hours each of those times, and she thanked Mrs. Hart. President Welsh said this had been a wonderful thing for the community. Former IGM/COP Hart noted that he had had his wife sign a non-disclosure statement for all the police records and said this document was on file and would be turned over to the new Chief.

District Administrator Wolter thanked Directors Toombs and Gillette. She noted that their work had been remarkable and that the community was better for it. She congratulated the new Directors and said she looked forward to working with them. She thanked the outgoing, new, and continuing Directors.

District Administrator Wolter reported that she'd received a number of phone calls about the potholes along Arlington Avenue and that she'd contacted Supervisor John Gioia's office and had learned that, upon completion of its projects, EBMUD planned to re-pave the road.

- 7a. The Board reviewed, discussed, and considered voting to approve Resolution 2016-15, approving a publicly available pay schedule pursuant to California Code of Regulations Section 570.5(a).

President Welsh introduced the upcoming agenda items and indicated that they were related to hiring Kevin Kyle as GM/COP. Former IGM/COP Hart explained that the District needed to have, on file, a pay scale that listed all of the officers and the GM/COP. He noted that this information had been routinely provided through the budget process. He explained that, by adopting the resolution, the District would meet CalPERS' requirements. He clarified that there was no new information contained in the schedule. President Welsh said this had been on the recommendation of Adam Benson, the financial consultant working with Public Law Group.

A. Stevens Delk asked if, based on the pay information listed for the GM/COP, the Board intended to continue paying PERS. President Welsh explained that this was the salary that had to be posted but that the position but that the position to be discussed later in the agenda was for a retired annuitant for whom there would be no CalPERS.

MOTION: Director Gillette moved, and President Welsh seconded, that the Board adopt Resolution 2016-15.

Motion passed: 4 – 0.

AYES: Welsh, Gillette, Toombs, Sherris-Watt NOES: ABSENT: Cordova

7b. The Board reviewed, discussed and considered voting to approve Resolution 2016-17, approving the appointment of Kevin Kyle to Interim General Manager/Chief of Police, pursuant to Government Code Section 21221(h).

Former IGM/COP Hart explained that this was a requirement for hiring a retired police officer to fulfill the hiring process through CalPERS to ensure that his hiring wouldn't affect his retirement. He said that the benefit to the community was that it would be paying this person only a salary, which would result in savings to the community. President Welsh explained that the proposed contract with Mr. Kyle was connected to the resolution.

President Welsh said he wanted to amend the proposed contact in two ways:

- At the beginning of paragraph three, it currently read, "The District would like to appoint you to work 25 to 30 hours per week, beginning November 14, 2016." He said he wanted to delete part of this so it read that he would work 960 hours per fiscal year. Former IGM/COP Hart interjected that, if a catastrophic event were to occur, 25 hours per week could be problematic and that stating the hours on a per fiscal year basis would be more logical. President Welsh added that, because Mr. Kyle would be new to the District, there would be a learning curve that might require him to work pretty much full-time during the first two or three months and that he then could taper off in order work the full fiscal year, which would end June 30, 2016.
- Delete language on the second page of the agreement: "... and that you will indemnify and hold the District harmless from any and all claims, allegations, or other actions related to your compliance with CalPERS rules for retired annuitant employees." He explained that there was no need for this clause.

Director Gillette said that she, too, had some changes and that, with respect to the fourth paragraph, she thought there should be a prefatory clause that read, "Unless terminated earlier, by you or the District, your interim assignment will continue..." She explained that this would be consistent with at-will employment.

Vice President Sherris-Watt said she said that the job description that was in the packet, as Appendix A, was not the same as what appeared on the website for the job posting. She said she would recommend that it be noted that the job requirements were what appeared on the website. President Welsh asked if the two documents were different. Vice President Sherris-Watt responded that the two documents were

pretty different. Director Toombs said he was disturbed that another job description had been created for the job posting on the website because the job description shown as Appendix A was what was in the Policy and Procedures Manual, which had been adopted by the Board. He said that something different shouldn't be put online unless approved by the attorneys. President Welsh and Vice President Sherris-Watt responded that the attorneys had approved it. Director Toombs expressed concern over the fact that a different job description had been written that varied from what was in the Policy Manual. Director Gillette offered a simple solution: at the end of the last sentence of the second paragraph add the words, "and the job listing on the District's website." Director Gillette noted that there was a "typo" in the last sentence of the third paragraph: "work" should read "word."

Jim Watt said that he had sent a letter in connection with some of the points that had been raised and that he supported the changes that had been made. He said he had other additions or clarifications he thought should be considered. He said the contract failed to specify anything about who would keep track of Mr. Kyle's time and when he would be paid. He suggested inserting language such as, "Mr. Kyle shall keep accurate daily records of his hours worked and that he shall invoice for these hours at the end of each month, for approval by the Board." He said this would be standard for independent contractors. He asked for clarification for the amendments that had been proposed in paragraph four and suggested that something more specific should be inserted. President Welsh responded that he had proposed to delete the hold harmless language. Mr. Watt said he thought something should be added: that Mr. Kyle should, specifically, agree that he would not work for any other CalPERS agency during the term of the contract. He said he was concerned that Mr. Kyle would work a portion of the 950 hours with the District and a portion of it with another agency. He concluded by saying that, as one who was very concerned with the District's finances, he thought this was a very good arrangement because it would save money on the salary side and on the benefits side. Thus, he said he supported the agreement. Director Gillette responded that there could be a problem with independent contractor status: The District couldn't limit him from working for other agencies. Former IGM/COP Hart noted that Mr. Kyle would be a retired annuitant employee, not an independent contractor. President Welsh said he didn't think the Board could make the changes, except for the provision that Mr. Kyle would keep accurate daily records of hours worked and submit and invoice. President Welsh asked how Former IGM/COP Hart had been paid. District Administrator Wolter responded that he had been paid twice a month. She explained that there were hourly wage employees, they kept timecards, and were paid on a twice-monthly basis. President Welsh said that he didn't have any problem with keeping an accurate record of hours worked but that he could submit them in the way consistent with the District's practices. Former IGM/COP Hart recommended that Mr. Kyle use the timecards and noted that CalPERS also had stringent requirements for retired annuitants.

MOTION: President Welsh moved, and Director Gillette seconded, that the Board adopt Resolution 2016- 17, together with the proposed letter contract with the amendments discussed. Motion passed: 4 – 0.

AYES: Welsh, Gillette, Toombs, Sherris-Watt NOES: ABSENT: Cordova

Former IGM/COP Hart introduced Kevin Kyle, who received a round of applause. Director Gillette said that she was excited about Mr. Kyle taking over the IGM/COP position, that he would be as wonderful as former IGM/COP Hart had been, and that she looked forward to his continuing the good service former IGM/COP Hart had provided. President Welsh welcomed him.

- 7c. The Board reviewed, discussed and considered voting to approve Resolution 2016-18, approving the interim appointment of Kevin Kyle to Interim General Manager/Chief of Police, pursuant to Government Code Section 61050.

Former IGM/COP Hart explained that CalPERS required this resolution for a retired annuitant, pursuant to the government code. He explained that, with this resolution, the District would be acknowledging that Mr. Kyle was a retired annuitant, that he would limited with his hourly salary, and that he would be

limited with the number of hours he would be working. He recommended that the Board approve the resolution.

MOTION: President Welsh moved, and Director Gillette seconded, to adopt Resolution 2016-18. Motion passed: 4 – 0.

AYES: Welsh, Gillette, Toombs, Sherris-Watt NOES: ABSENT: Cordova

- 7d. The Board reviewed, discussed, and considered voting to accept the engagement letter from Wendel, Rosen, Black, Dean, LLP and appoint Amara Morrison as District Legal Counsel.

Director Gillette reported the Board had interviewed several firms and individuals to serve as outside counsel as a result of Public Law Group having terminated its relationship with the District. She explained that there was some urgency to this because Public Law Group had notified the District that it was terminating the relationship in July. She said PLG had stayed on but had been less and less responsive, except for Adam Benson. Director Gillette said that the Wendel Rosen firm, a large firm in Oakland that served a number of public entities, was the law firm she recommended. She said this had been discussed with all the Board members. She said the Directors had met the person who would be the primary person in charge: Amara Morrison. She said that Ms. Morrison had experience working for Walnut Creek and Livermore and also had experience working for public agencies in a private firm. She said Wendel Rosen was a full-service firm, which meant that if anything happened, such as litigation or transactional work, the firm would be able to take care of it. She reported that the firm had given the District a break on the rates, including a flat fee for attending meetings, which Vice President Sherris-Watt and she had negotiated with Ms. Morrison. She said there would be a reduced fee for the first 90 days and an additional reduced rate for the time thereafter. She reported that Ms. Morrison had agreed to do an on-boarding session for the new Directors, free of charge. Director Gillette said Ms. Morrison had hoped to attend the evening's meeting, but something had come up. She said that Ms. Morrison was a lovely woman and that her firm was very well respected. She concluded by recommending that the Board adopt the Wendel firm as its new outside counsel, based on the engagement letter included in the Board Packet.

Mabry Benson asked if it would be necessary for the attorney to attend all Regular and Special Meetings of the Board. Director Gillette responded that the Board would have the option of saying Ms. Morrison didn't need to attend. Ms. Benson asked about the District being charged a flat rate for meetings and noted that, for some meetings, the Board would go over that limit. She also noted that the lower rate was for 20 hours per month, at least in the first 90 days and asked if the 20 hours included travel time. Director Gillette responded that it probably would include travel time because Ms. Morrison couldn't work during travel time. Ms. Benson said there was no indication of who would have access to the 20 hours of time. President Welsh responded that this would be up to the new Board and predicted that there would be significant discussion about how the Directors would manage the use of attorney time in order to keep the bills affordable. Director Gillette added that there was a provision that the firm would notify the District if it was getting close to the limit. Ms. Benson asked why the rates would go up after 90 days. Director Gillette responded that it was an introductory fee. President Welsh added that the assumption was that, after Ms. Amara had learned about the basic issues and become familiar with the District, she'd be able to serve the District more efficiently.

David Bergen asked if Ms. Morrison would be an at-will employee and whether the new Board could select a different firm. President Welsh responded that this was being set up so the new Board would have total control and could choose someone else. Director Gillette responded that the District could always fire its attorney but that, recently, the attorneys had been firing the District.

Karl Kruger said that he would continue to remind the Board of legal fees.

Vice President Sherris-Watt said she was rather on the fence. She said that, while she appreciated Ms. Morrison's expertise, she didn't think that Wendel Rosen and Ms. Morrison were the ideal fit for Kensington. She noted, though, that bringing Mr. Kyle in without legal representation in his early days would be difficult. She said she would be casting a positive vote this evening but wanted the new Board to have the chance to consider the candidates of their choosing.

**MOTION: Director Gillette moved, and President Welsh seconded, that the Board retain the Wendel Rosen firm, specifically Amara Morrison as the partner in charge, for purposes of providing legal services to the KPPCSD by signing the engagement letter.
Motion passed: 4 – 0.**

AYES: Welsh, Gillette, Toombs, Sherris-Watt NOES: ABSENT: Cordova

- 7e. The Board reviewed, discussed, and considered voting to appoint Kevin Hart Interim General Manager, effective November 1, 2016, through November 14, 2016.

President Welsh explained that this was meant to cement the short-term independent contractor arrangement with former IGM/COP Hart, which the Board had attempted to enter into at the Special Meeting it had held the prior week. He said the Board had gotten into this situation because it had originally intended to propose hiring Mr. Hart as an independent contractor because it had a gap of time to fill, from November 1st through November 14th. He said the gap was there because the Board couldn't enter into a remunerative relationship with a CEO, which was what Kevin Kyle would be, at a Special Meeting, nor could it enter into an independent contractor arrangement at any meeting other than a Regular Meeting. He explained that what the Board had done on advice of counsel was to fill that gap with Mr. Hart serving as an independent contractor at the Special Meeting but waiting until the Regular Meeting to discuss remuneration. He noted that Mr. Hart risked there being a vote not to remunerate him. President Welsh said the proposed hourly rate was \$69.71, the hourly rate of his salary without benefits. President Welsh summarized that the proposal was to pay Mr. Hart at the rate of \$69.71 for the hours he had worked between November 1st and 8:00 A.M. on November 14th. President Welsh said he had asked Mr. Hart to keep his hours to no more than six hours per day. Mr. Hart said he had worked fewer than 60 hours during the 10 weekdays. President Welsh said that Mr. Hart would be on call for emergencies on weekends and off-hours and that, if such an emergency were to arise, he would check in with President Welsh to ascertain whether he should respond, and they would decide together whether he would.

Vice President Sherris-Watt said she had a question about the fifth paragraph of the letter, which read, "...through November 4th, 2016." She said it should read "... through November 4, 2016."

Vice President Sherris-Watt said she would abstain from the vote because she had been unable to attend the October 31st meeting.

**MOTION: President Welsh moved, and Director Gillette seconded, that the Board approve Chief Hart's remuneration at a rate of \$69.71 per hour, as stated in the letter he had signed on October 31st, with the one amendment for the "typo."
Motion passed: 3 – 0, with one abstention.**

AYES: Welsh, Gillette, Toombs NOES: ABSENT: Cordova ABSTAINED: Sherris-Watt

- 7f. The Board reviewed and discussed amending Policy 5030.41, which currently stated that five (5) minutes be allotted to each speaker and a maximum of twenty (20) minutes to each subject matter. The Board considered voting to change the above-mentioned policy to delete the 20 minute limitation.

President Welsh explained that he had placed this item on the agenda and said the Board had considered numerous other changes to the Policy and Procedures Manual. He said he didn't want to go forward with those at this meeting because he thought those changes should be up to the new Board. He said he did want to make this change because the twenty-minute limit had never been observed. Thus, he said his proposal was to change the Policy Manual to delete the limitation. He clarified that he was not proposing to change the five-minute per speaker limit.

Director Gillette asked if this would require two readings. IGM Hart responded in the affirmative. Director Gillette asked why the Board wouldn't change the five-minute limit as well – to three minutes.

Director Toombs noted that the issue of whether the proposed change to the Policy Manual's 4/5 vote requirement had gone through a first reading but was still a pending issue. IGM Hart responded that this item had been placed on a prior agenda but, because of the 10:00 adjournment time, hadn't been heard.

A. Stevens Delk said this item had always been confusing because she had always assumed that the five minutes per speaker pertained to public comments. President Welsh responded that the Board wasn't debating the five-minute issue. Dr. Delk said the policy should clarify that the limit pertained to the public, not to the Directors. Director Toombs responded that the limit applied to members of the public. Dr. Delk noted that limits had been unenforceable. President Welsh responded that this was why he had proposed to remove it.

Mabry Benson asked if the five-minute limit applied to each person for the entire meeting or for each subject. Director Toombs and President Welsh responded that it was for each agenda item.

Director Gillette said that, if the new Board chose to adopt this, the language needed to be clear that it applied to each agenda item.

Catherine de Neergaard asked why it was important to delete this: It might come in handy at some point. She also spoke favorably about the three-minute limit, with an option of extending to four minutes. She said this would make the meetings shorter and would make it easier to get everything done by 10:00 P.M. She noted that most entities limited public comments to three minutes.

- 7g. The Board reviewed, discussed, and considered voting to approve an agreement between the Kensington Police Protection and Community Services District and Kensington Community Council for Recreation and Education Program Services and Facilities Management.

IGM Hart reported that this was an agreement that the Kensington Community Council's (KCC) president, Anne Forrest, and board had been working on for some time in order to update the expired contract between the two entities. He explained that the KCC provided a number of classes at the Community Center almost every day and that this agreement would result in the KCC paying for use of the building, with two payments per year. IGM Hart said that among the changes to the document was that it would provide for CPI increases each year to help cover the cost of operating the building. He recommended that the Board approve the contract.

Mabry Benson asked how many hours the KCC used the facility. IGM Hart responded that it used the building Monday through Friday, from 8:00 A.M. until 5:00 P.M. He added that other K-Groups used the building Monday through Wednesday, at night. He noted that the building was not used for a brief period of time on Wednesday mornings.

Gail Feldman asked what the annual costs for maintaining the building were for the recreation programs. IGM Hart summarized the range of services provided but said he couldn't cite the amount off the top of his head, but did say the costs exceeded the \$15,000 amount paid by the KCC. Ms. Feldman asked for how many years the amount had been at \$15,000. IGM Hart responded it had been so for at least the prior three years.

Vice President Sherris-Watt said she wanted to table the item; otherwise she would bring it back the following month with amendments. She said that the Park Buildings Committee had met on November 1st and that it would end up recommending a firm to make renovations to the Community Center, pending the Board's approval. She said the likely firm had given her rough dates of when the building would not be able to be occupied by KCC. She said she wanted to have a contract that anticipated that possibility. She said that she and Ms. Forrest had hoped to get together to discuss all the finer details, but their schedules had not allowed for this and that she wanted to wait on the agreement until after this had happened. IGM Hart said that he had had extensive discussions with Ms. Forrest and that he had put it back on the agenda because she and her board wanted to have a financial agreement in place that supported the indemnification clauses it contained. He explained that many of the K-Groups had not had insurance and that, at his request, this requirement had been added to the agreement. He noted that Ms. Forrest and the KCC board were aware of the fact that the building might be modified and that the KCC hoped the agreement would be approved as presented.

Director Toombs said he would be voting for the agreement, noting that a contract could always be modified. He added that there was one point that had been a sticking point for him since he had come on the Board: \$15,000 was not enough money. He said that, when one was talking about, as Jim Watt always said, how the District needed every dime, the Community Center was a profit center that was going un-touched and that the amount should be increased further down the road.

President Welsh expressed his concern that, if the KCC couldn't use the building as set forth in the contract, the KPPCSD could be opening itself up to a problem. Director Toombs cited the language regarding the required 45-day notice, prior to the annual renew, for termination and added that he didn't think the KPPCSD would have begun work on the building prior to that date in 2017. Director Gillette questioned whether the new Board would be in a position to approve the agreement at its December meeting because the new Directors would just be coming on to the Board and would be discussing things as big as which architects to hire. Vice President Sherris-Watt responded that all the candidates had appeared at the Park Buildings Committee meetings for the prior couple of months and so were up to speed. Director Gillette asked what the urgency was of taking care of the item that night. IGM Hart responded that the District and the KCC had been out of contract for about a year. He said he also wanted to make sure the District obtained indemnification from the various groups that used the building. He explained that if, for example, children were hurt on some of the gymnastics class equipment or during a cooking class, the District would not be indemnified. President Welsh asked for clarification on the coverage. IGM Hart responded that both KCC and the individual groups using the building would have coverage that would indemnify the District. Director Gillette suggested adding a paragraph that said that KCC understands that the Community Center would be redone and, as a result, the contract might have to be modified and that the District would provide a 30-day notice should that happen. Vice President Sherris-Watt responded that she thought it would be easier to table the item and that Ms. Forrest had told her two weeks earlier that there wasn't any urgency and so, she hadn't realized this would be coming up on the agenda. IGM Hart noted that this was an item of unfinished business he wanted to take care of, following discussions with Ms. Forrest that reflected her discussions with her board. He noted that every day the Board waited was putting the District at risk of someone getting hurt on the property. Director Gillette asked if the Board would be willing to approve the agreement if it contained a statement that there could be a disruption, which she said she doubted would occur before the contract ended and suggested that Vice President Sherris-Watt could negotiate that and then the Board would be done. President Welsh said he agreed with the suggestion.

MOTION: Director Gillette moved, and President Welsh seconded, that the Board approve the contract, with an amendment: A clause would be added and drafted by someone, with the intent being that the Board would notify KCC in the contract that there would be the possibility that the use of the building could be interrupted due to construction that is planned to be done sometime in the future and that the Board would give them some period of notice before that would happen and that would not be a violation or breach of the agreement and that the Board authorize Vice President Sherris-Watt to work with the lawyers to draft that language and the General Manager to draft that language and then propose it to KCC and have that happen as soon as possible. Motion passed: 4 – 0.

AYES: Welsh, Gillette, Toombs, Sherris-Watt NOES: ABSENT: Cordova

CONSENT CALENDAR

President Welsh asked if anyone wanted to pull an item from the Consent Calendar.

Karl Kruger asked to pull Item c.

Director Toombs noted there had been a “typo” on the vote on page 35. The vote had been 4 – 0, not 4 – 1, because Director Cordova had been absent.

Karl Kruger said that, on line 16 of his statement on page 25 of the October 13, 2016 minutes, the minutes indicated that he’d said that “Kensington was already paying 2.7% as much as El Cerrito” for fire service. He said he’d meant to say that Kensington paid 2.7 times as much as El Cerrito for fire service. He said that Kensington paid \$673 per capita per year and that El Cerrito paid \$244 per capita per year.

Vice President Sherris-Watt noted that highlighting on page 20 should be removed.

MOTION: President Welsh moved, and Director Toombs seconded, to adopt the Consent Calendar, as proposed to be amended. Motion passed: 4 – 0.

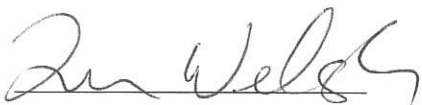
AYES: Welsh, Gillette, Toombs, Sherris-Watt NOES: ABSENT: Cordova

MOTION: President Welsh moved, and Director Toombs seconded, to adjourn the meeting. Motion passed: 4 – 0.

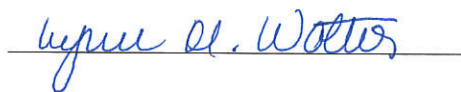
AYES: Welsh, Gillette, Toombs, Sherris-Watt NOES: ABSENT: Cordova

President Welsh reiterated his thanks to Directors Gillette and Toombs and IGM Hart.

The meeting was adjourned at 9:14 P.M.



Len Welsh
KPPCSD Board President



Lynn Wolter
District Administrator