

CLASHES CONTINUE IN KCB AS CITY GRAPPLES WITH REFERENDUM, POLICE UNION & FRAUD INVESTIGATIONS

By Alex Rickert - August 25, 2023

Key Colony Beach has yet to see resolution to three hot-button issues facing the city, with a petition for a City Hall referendum, police unionization and dual fraud investigations all still underway. Still, the city's Aug. 17 meeting saw surprisingly little discussion of these items.

City Hall Petition Signatures Grow as KCB Files Motion to Dismiss Injunction

A group of concerned citizens at odds with the city commission's July 20 decision to award construction of a new City Hall building to Hands On Builders LLC (HOB) continues to gather signatures in an attempt to instead force a referendum vote to decide the fate of the city's government hub. Headed by KCB residents Joe Schmidt and Laurie Swanson, the group told the Weekly on Aug. 22 that they have 151 "signed voter petitions in hand and recorded," buoyed largely by a petition signing event on Aug. 5.

Per Key Colony's code, the group must submit verifiable petitions from 25% of KCB's voters to City Clerk Silvia Gransee by mid-September. With 650 registered voters in the city, according to Monroe County Supervisor of Elections Joyce Griffin on July 28, the magic number stands at 163 "" but Swanson said her target is much higher.

"200 petitions will give us a comfortable margin of error, but 250 petitions are what I would like to see," she said in an email. "We have 10 or so more that need to be fixed by the voter for one reason or another. "| We also have about 10 being recorded as I write."

Swanson has been vocal in her frustration with obtaining what she believed to be the correct number and type of petition "blanks" from the city, saying the original documents the group was asked to fill out were sent before she even requested them, were overly burdensome, and detailed a proposed amendment to Key Colony's code, not a challenge to a specific City Commission decision. She opened Thursday's meeting with a sharp address to the commission, likening her communications with city staff and commissioners to "communicating with a brick."

Copies of the petitions obtained by the Weekly show a noteworthy

phrasing element: the petition contains only a question of whether or not to reject the commission's 3-2 vote to award the build to HOB. It does not, as several core members of the group would prefer, specifically request repairs to the existing City Hall building, leaving the door open to multiple future possibilities.

Concerned that demolition of the existing building could occur before the petition ran its course, attorney Matthew Hutchinson filed a petition for temporary injunction on Swanson's behalf on July 27, seeking to put a hold on the city's progress while she worked through her petition timeline.

A motion to dismiss the injunction, subsequently filed by KCB City Attorney Dirk Smits on Aug. 15, called the measure "At its core"|"nothing more than an attempt by a taxpayer "| to block the contractual award and to attempt to force the City to consider an entirely perspective and speculative less expensive option to repair versus replac(e) the existing City Hall that was substantially damaged by Hurricane Irma." Among other items, the motion goes on to argue that the HOB award is a "discretionary level planning decision" not subject to challenge and invokes the city's right to sovereign immunity.

The issue of the injunction will be settled in a Key West courtroom next month, as the two sides will head to the southernmost city for a hearing with Judge Mark Jones on Thursday, Sept. 21.

Speaking with the Weekly on Aug. 21, Hutchinson said he found the motion to dismiss "a little unexpected" given the short-term nature of Swanson's request, and that while he didn't feel the language in forms given to Swanson for her petition was "100% correct," he felt it was "probably close enough to get the referendum on the ballot."

When Hutchinson previously spoke to the Weekly on July 28, he said he was optimistic Swanson's referendum petition would proceed smoothly, chalking up early paperwork difficulties to a seldom-used process pulling from sections of KCB's severely aging code. Asked if the recent motion had changed his outlook, Hutchinson said his communication with the city has thus far been "professional," but "we have a disagreement about the procedures in light of their motion. And we have a huge disagreement about the merits of their motion to dismiss."

In a sit-down interview with the Weekly on Aug. 22, City Administrator Dave Turner said he had stayed away from petition negotiations, turning the proceedings over to Smits and clarifying that "I support everyone's rights, and I answer to the commission."

Asked if the existing building was at risk within the next few weeks had Swanson not filed her petition for injunction, Turner said flatly: "No. (It) never was." In fact, he said, the city has yet to even write a formal letter awarding the contract to HOB in the midst of swirling legal proceedings.

"As soon as our attorney says the project can be awarded, they'll write an award letter, and we'll move forward," he said.

Police Unionization Underway As Turner Addresses Defunding Allegations

In the case of KCB's police unionization efforts, ongoing since early May, the phrase "no news is good news" may apply. But in the midst of proceedings that otherwise appear to be going smoothly after a rocky start, Turner in particular has been held to answer for alleged attempts to "defund the police" and delay an officer's promotion.

The unionization proceedings are currently overseen on the officers' side by attorney Andrew Axelrad, general counsel for the Dade County Police Benevolent Association, which has handled the negotiations so far. The fledgling union is still waiting on its next step: a final order from the state's Public Employee Relations Commission (PERC), a three-member group appointed by the Florida governor tasked with reviewing the KCB police's right to unionize.

At the city commission's July 20 meeting, commissioner Freddie Foster criticized a May 9 email from Turner to the seated commissioners, in which Turner mentions "a need to look at our Public Safety as a whole, and the savings to the city (in excess of \$450,000)" as the city prepares its 2023-2024 budget.

"The only thing I can think of is that we're either defunding the police, or removing them," said Foster, referring to a line in KCB's 2022-2023 budget listing police salaries of \$458,476.

Such a move, if made during ongoing union negotiations, would almost certainly land the city in hot water, considering the passage of several new pro-police laws championed by Florida Gov. Ron DeSantis in the last two years. Asked on Aug. 22 whether his email had anything to do with defunding KCB's police department, Turner again said: "No."

"It had nothing to do with the police," he reiterated, saying instead that his email was aimed at ongoing discussions regarding the city's fire and EMS services, currently contracted with the city of Marathon at an annual cost of \$550,000.

Turner further pointed to figures that included both salaries and benefits paid to KCB officers over the city's last three budget years: \$550,961 spent in FY2021-22, an estimated \$649,320 total for FY2022-23, and a budgeted \$807,474 for FY2023-24.

Also called into question in recent weeks was the promotion of officer Jamie Buxton, set to assume the open post of sergeant within the city's police force, but with no recent progress.

Turner attributed the delay to a need to maintain "the status quo" as unionization efforts are ongoing "" advice he said came from attorney David Miller, a labor and employment law expert hired by KCB to advise the city in matters of labor negotiations.

Another publication recently challenged Turner's stance, claiming Axelrad and Miller had "agreed that Buxton should still be promoted" as union negotiations continue. But in an email to Turner dated Aug. 10 with a subject line "Misquote in media," Miller rejected this statement, claiming both he and Axelrad believed their interaction was somewhat mischaracterized.

"Mr. Axelrad has contacted me on his own initiative and said that he did not tell (another reporter) that I ""agreed that Buxton should still be promoted,"" Miller wrote. "Mr. Axelrad's position was that the status quo includes making promotions. After investigation, I did not agree with that assessment. However, because the union does not oppose a promotion, then there should not be a legal problem if a promotion went forward. That was the extent of my discussions with Mr. Axelrad."

FEMA Probe Ongoing as KCB Fraud Investigation Begins

One item that did see limited discussion in Thursday's meeting was Key Colony's hiring of an independent investigative attorney to delve into allegations of fraud perpetrated by former city employees in the wake of Hurricane Irma, again printed in another publication.

Smits told commissioners that he had already been interviewed to begin the independent investigation, but that he would by necessity be excluded "" short of providing a few requested documents "" from the remainder of the proceedings until delivery of a final report.

"The next steps are up to (the independent attorney)," said Smits. "Everything that takes place during the investigation is confidential, meaning whatever happens before the final product cannot be obtained independently. " | So there's no way to get in the middle of his work until it's concluded."

The city's decision to hire its own investigator comes as FEMA wades through its probe into the post-Irma treatment of the old City Hall building. Though senior fraud investigator Tim Hoover told the Weekly by phone in late July that he could not confirm any ongoing investigation, former building official Ed Borysiewicz said Hoover had contacted him regarding the allegations earlier that month in a conversation that lasted "about half an hour."

ALEX RICKERT

Alex Rickert made the perfectly natural career progression from dolphin trainer to newspaper editor in 2021 after freelancing for Keys Weekly while working full time at Dolphin Research Center. A resident of Marathon since 2015, he fell in love with the Florida Keys community by helping multiple organizations and friends rebuild in the wake of Hurricane Irma. An avid runner, actor, and spearfisherman, he spends as much of his time outside of work on or under the sea having civil disagreements with sharks.