



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

4:00 PM Wednesday, October 15, 2003  
Key Largo Civic Club, 209 Ocean Bay Drive  
Key Largo, Monroe County, Florida

## Board Members Present

Andrew Tobin, Chairman  
Gary Bauman  
Cris Beaty  
Charles Brooks  
Jerry Wilkinson

## Staff Present

Robert E. Sheets, General Manager  
Charles L. Sweat, Director of Operations  
Terry Lewis, Attorney (via telephone until 4:40 pm)  
Ed Castle, PE, District Engineer (via telephone until 4:40 pm)  
Faith Doyle, Board Clerk

## Guest Present

Ms. Science Kilner, FEMA (via telephone until 4:30 pm)  
Lawrence Frank, FEMA (via telephone until 4:30 pm)  
Dr. Straw, FEMA (via telephone until 4:30 pm)  
Miles Anderson, DCA (via telephone until 4:30 pm)  
Joan Drejerski, Key Largo resident  
Gaile Jelink, Key Largo resident  
Robert E. Burt, Key Largo resident  
Charles Fishburn, Key Largo resident  
Doris Kendall, Key Largo resident  
Dirk M. Smits, Esq.  
James Lupino, Esq.  
Thomas Dillon, Esq.

### A. Call to Order

Chairman Tobin called the meeting to order at 4:00 p.m.

### B. Pledge of Allegiance

All stood and recited the Pledge of Allegiance.

### C. FEMA teleconference concerning the Environmental Assessment

The FEMA call began at 4:00 p.m. Mr. Sheets stated that the Chair had requested that he keep in close contact with FEMA due to the concerns of the Board. Mr. Sheets

stated that the delay in approving the site could cause construction delays and possible grant default.

Ms. Science Kilner stated that the draft Environmental Assessment ("EA") was being developed from the information received. However, the low-income plan was still needed. Mr. Sheets stated that the 70/30 funding plan was on the BOCC agenda. Mr. Sheets stated that the implementation plan is forthcoming. Ms. Kilner stated that the implement plan must be solid and where the dollars are coming from must be certain. Mr. Sheets stated that the County would be the implementing arm for the program. Ms. Kilner stated the design and engineering of the projects should be reviewed. Ms. Kilner questioned if the conceptual plan was close to the original preliminary design that was done by Boyle Engineering. Mr. Ed Castle stated that it was close to the Boyle design. Mr. Kilner stated that she had received WEC's comments on the draft EA. Mr. Sheets informed Ms. Kilner that the Board would hold a Special meeting on October 17 to decide technologies. Ms. Kilner requested that she be updated as soon as possible after the special meeting concerning the actions taken by the Board. Ms. Kilner stated that she required confirmation of the rates. Mr. Sheets inquired if the meeting minutes supporting the approval of the resolution and a copy of the approved resolution would meet the requirement. Ms. Kilner stated that the items would be sufficient and requested they be forwarded immediately so that Dr. Straw could begin his review of the documents.

Dr. Straw stated the his questions on the draft were the alternative site, the rate structure and the low and very low income plan and that once the information was received a first final draft could be generated within several weeks. Dr. Straw stated that if there were no un-for-seen disasters he would be able to give the KLWTD EA immediate attention. FEMA is considering holding the public hearing the first week in December. Dr. Straw stated that an issue arising from Hurricane Isabella set the schedule back. Mr. Sheets stated that the KLWTD requested that if the public hearing could coincide with a regular Board meeting it would be beneficial. Dr. Straw stated that if all additional information is received quickly the December 3 meeting would work. Ms. Kilner agreed that if all information was received by November 1 the regular KLWTD December 3 meeting would be used for the EA public hearing.

Commissioner Brooks asked if there would be a 30-day comment period after the public hearing. Ms. Kilner stated that the comment period starts two weeks prior to the hearing and continues two weeks after and then after the hearing she must incorporate the public comments into the document and finalize the draft, which could take approximately 30 days. Ms. Kilner gave a projected final draft date of the 1<sup>st</sup> week of January 2004 before FEMA approves the grant to be issued by the State, assuming the public hearing is held in December and no emergency disasters arise.

Commissioner Brooks asked for a date that construction could begin. Mr. Sheets asked when the "fonsi" would be issued. Dr. Straw stated approximately the first week in January 2004. Mr. Sheets asked if once the "fonsi" is issued could DCA begin phase 2. Mr. Miles Anderson stated that a temporary contact would be drafted and the environmental condition added. It would then be forward to the KLWTD to be executed. An approximate date of mid to late February 2004 was given for the start of construction.

Commissioner Wilkinson stated that he was aware that the public has concerns with both sites. Ms. Kilner stated that she was aware of comments received 3 years ago when the County proposed the site, however, FEMA has gone through the processes of due law and adhered to the Endangered Species Act and an opinion was given. The mitigation measures stated in the opinion will need to be met. Also, per the Environmental Policy Act, FEMA will accept the comments but if the project is implemented with the mitigation steps specified the project would be funded. Discussion ensued concerning the previous and potential public comments. Ms. Kilner stated that if the Board wants to see the comments she would forward a copy to them.

Commissioner Wilkinson stated concern for the property owners who are renting to others and getting subsidies that take away from the true resident owners. Discussion ensued on the renters issue. Ms. Kilner notes that FEMA requirements are only for homesteaded properties and that the law doesn't permit FEMA to go further.

Mr. Sheets asked if FEMA would provide a document showing the dates discussed and the things required to be forwarded by the KLWTD. Ms. Kilner stated that the draft September 10 document and cover letter provide this information. Dr. Straw stated that the tentative December 3, 2003 date could be committed to writing with the caveat that if a disaster arises it may be delayed.

Commissioner Brooks asked how much notice is given to the public prior to the meeting. Dr. Straw stated two weeks or approximately November 15, 2003 for a December 3, 2003 meeting. Ms. Kilner stated that she would give the board an opportunity to comment on the notice.

Chairman Tobin requested that the survey concerning shared driveway access from Chris Santee be added to a future agenda. Chairman Tobin stated that Mr. Santee would like direction on how this issue will be resolved.

Mrs. Doris Kendall of Key Largo asked if she could address the Board concerning the location of the proposed treatment plant. Chairman Tobin stated that the proposed site is at mile marker 100.5.

Chairman Tobin asked Mr. Dirk Smits to approach the Board at 4:35.

Chairman Tobin stated that no formal procedure was drafted on conducting the interviews but the manager suggested that qualification be discussed first and then costs second. Chairman Tobin stated that Mr. Smits had previously volunteered his rates, but the other candidates were not asked to do so.

Chairman Tobin suggested the Board rank the interviewees by preference and then discuss costs. Chairman Tobin asked the rest of the Board for their comments.

Commissioner Brooks assumed that the interviews would take place then after they depart there would be a discussion. The balance of the Board members agreed.

Mr. Smits stated that he had previously forwarded his resume. The members of the Board stated that they had received it. Mr. Smits stated that he was a resident of Key Largo, the chair of the Florida Bar Grievance Committee and a volunteer mediator. Mr.

Smits stated that he is a member of the San Pedro Catholic Parish. Mr. Smits is currently working with Vernis and Bowling P.A. as the manager with five associate attorneys under his supervision at the local office. His experience relevant to the KLWTD would be that he is a government practitioner with approximately half of his work relating to government as general counsel to the Mosquito Control Board, the Monroe County School Board and the Layton City Counsel. Mr. Smits noted that he has been requested to be legal counsel for the Monroe County Code Enforcement Office.

Mr. Terry Lewis excused himself from the meeting at 4:40 p.m. noting that if further assistance was required of him he would be available until 6:15 pm.

Mr. Ed Castle excused himself from the meeting at 4:40 p.m.

Mr. Smits stated that he is familiar with the Sunshine Law, public law, contract, ethics and Roberts Rules of Order. Mr. Smits showed the Board examples of the City of Layton new members handbooks and an introduction to the Sunshine Law and public records. He has great experience with the Sunshine Law and has responded to hundreds of public records requests. Mr. Smits stated that he is familiar with procurement law, bid protests, procurement methods and contracting for public entities and the bonding requirements for various projects. Mr. Smits summarized the details of the sunshine violation brought against him. Mr. Smits thanked the Board for their consideration.

Commissioner Bauman asked if Mr. Smits personally represents the government entities he named. Mr. Smits stated that he has contracted with them, they are regular clients and he is personally attending most of the meetings. If not Mr. Scott Black or Dennis Reich are his government associates. Commissioner Bauman asked if he would be attending the KLWTD meetings. Mr. Smits answered in the affirmative.

Commissioner Beaty asked how his firm was selected for the position on the Mosquito Board. Mr. Smits stated that he answered an ad in the paper and then interviewed. Commissioner Beaty asked how many hours a month he worked for the mosquito board on a monthly basis. Mr. Smits stated that it fluctuates but on average outside of the meetings 8 -10 hours a month.

Commissioner Brooks asked about the affiliate offices in Florida and if there was a mechanism in place to avoid travel to Tallahassee if business would need to be done there. Mr. Smits stated that he had contacts in Tallahassee to assist with getting things done and to save recourses. Commissioner Brooks asked if Mr. Smits was aware of how the KLWTD Board has worked with at least two meetings a month that last four to five hours and in an effort to contain costs are looking for a local lawyer that will be economical to review the mundane items. However, if KLWTD gets into a legal issue, is he willing to go through the meeting and if things arise during the meeting be available to deal with them. Mr. Smits stated that he likes to hear the history of the Board to understand the Board's concerns and that comes from attending the meetings. Commissioner Brooks asked were Mr. Smits offices were located. Mr. Smits stated at the 81 mile marker and that there is 24 hours a day, 7 days a week access to him at the quoted price.

Commissioner Wilkinson stated that the other members had asked questions that provided him with most of his answers. Commissioner Wilkinson asked if Mr. Smits had in house legal resource available to him. Mr. Smits answered in the affirmative. Commissioner Wilkinson asked if Mr. Smits was a litigator and if he had any other wastewater districts as clients. Mr. Smits stated he did not directly but had experience with independent special districts. Commissioner Wilkinson asked about copying, typing and incidental expenses. Mr. Smits stated that these would be considered extra and will be charged for. Commissioner Wilkinson asked about extra meetings in the upper Keys. Mr. Smits stated that it was his understanding that the Board met monthly, however the retainer would cover the two regular meetings a month and the telephone access. Commissioner Wilkinson asked if the Board would be charged for routine matters. Mr. Smits stated that if research was required there would be a charge but for a logical follow up from a meeting there would not be a charge. Mr. Smits stated that at a minimum any tasked items would result in a budget being provided to the Board for approval. Commissioner Wilkinson asked if reviewing a route contract would incur a charge. Mr. Smits stated that it would be charged for. Resolution is a logical extension of the meeting per dirk as is a change order per Mr. Smits. Commissioner Wilkinson asked if review of the minutes is part of the meeting agenda. It is considered part of the meeting and not charged for per Mr. Smits. Commissioner Wilkinson asked how Mr. Smits would handle a potential conflict of interest. Mr. Smits stated he did not believe there were presently any conflicts and if any arise he must disclose them. Commissioner Wilkinson asked if a litigator was needed what would Mr. Smits charge. Mr. Smits stated that it would be \$95 an hour plus costs.

Chairman Tobin stated he was is glad to see Mr. Smits being candid to say he was not an expert in wastewater issues. Chairman Tobin questioned of the corporate structure of Vernis & Bowling. Chairman Tobin asked if Mr. Smits was familiar with Roberts Rules of Order and posed several questions to Mr. Smits. Chairman Tobin asked Mr. Smits views on preparation of basic resolutions being done by staff. Mr. Smits stated that he would have no conflict with this. Chairman Tobin asked Mr. Smits about his appointment as a special prosecutor for Monroe County. Mr. Smits stated that presently he had only been assigned one case. However, if a conflict arises he would bow out.

Commissioner Brooks reaffirmed Mr. Smits quoted price of \$95 an hour with a \$400 per month retainer for meetings, phone calls and logically connected its like the meeting minutes and agenda. Mr. Smits confirmed the information. Chairman Tobin asked how emails would be handled. Mr. Smits stated that he could not be used as a conduit to the members but simple questions asked as one-way communication is okay, not two way through the lawyer. Commissioner Bauman asked if it should be a police activity to update all members simultaneously. Mr. Smits stated that if one member gets information all should get it to keep the same information in front of all members.

Commissioner Brooks asked about the potential conflict issue. Mr. Smits stated that he has a screening method to avoid conflicts. Mr. Smits stated that as special prosecutor with the County they have many to choose from so he can avoid conflicts.

Chairman Tobin thanked and excused Mr. Smits at 5:20 p.m.

Ms. Doris Kendall asked to address the Board. Chairman Tobin would like to hold public comment until after the time specific interviews. Ms. Kendall requested that Mr. Smits be present for her comments. Chairman Tobin stated that it was a professional courtesy for the attorneys to interview individually. Discussion on public comment ensued. Chairman Tobin stated that comments would be taken later in the meeting.

Mr. James Lupino addressed the Board beginning at 5:25 p.m. Chairman Tobin asked indulgence for the delay due to the need to teleconference with the FDEP on a pressing issue. Mr. Lupino introduced himself and stated that he arrived in the Keys in 1989 and has practiced since 1977. He had been in house legal counsel for a cement and lumber firm and has been in private practice since 1980 and in his current partnership since 1995. He currently serves the boards of the Florida Board of Governors and is Chairman of Key Largo Chamber of Commerce. Mr. Lupino's primary area of practice is Business Law with specialty in contracts, construction, real estate and litigation.

Commissioner Wilkinson asked Mr. Lupino if he had experience with the Florida Public Government laws. Mr. Lupino stated he had very little direct experience but had land use experience and he is familiar with Monroe County Ordinances. Commissioner Wilkinson asked if he had legal resources available throughout the state. Mr. Lupino stated that as a member of Florida Board of Governors of the Bar Association he has contract with attorneys from all circuits of the state. Commissioner Wilkinson asked if Mr. Lupino would attend all meetings, which can be more than twice a month. Mr. Lupino stated that if something comes up he has back up. Mr. Lupino had anticipated that the Board would meet twice a month. Commissioner Wilkinson asked about fees. Mr.

Lupino stated he would work out a billing hourly rate and a retainer is negotiable. Commissioner Wilkinson asked how additional cost would be accounted for. Mr. Lupino stated that soft costs and hard costs are out of pocket in advance and that soft costs are computed at a fixed percentage. Mr. Lupino stated that attending additional meetings outside of the Keys are negotiable and travel and expenses would be reimbursable. Commissioner Wilkinson asked about routine matters resulting from the meeting. Mr. Lupino stated that these items would be at the hourly rate unless otherwise negotiated, as would he for drafting resolutions. Commissioner Wilkinson asked about litigation rates. Mr. Lupino stated there could be a sliding scale negotiated but if there is a lawsuit to be litigated it is a risk and would be charged at the full rate.

Commissioner Wilkinson asked Mr. Lupino's view on a board member having access to legal council. Mr. Lupino stated that routine telephone calls or email related to an agenda item would not necessarily be billed, but 4-5 phone calls a day from each member would be billable.

Commissioner Wilkinson asked if Mr. Lupino had any conflicts if representing KLWTD. Mr. Lupino stated there would potentially be one with Caffinetti and his stating it was for disclosure. Mr. Lupino stated that he is on the Wastewater Committee for the Chamber of Commerce so he may need to bow out of certain votes posed to the Chamber's Committee.

Commissioner Brooks asked if Mr. Lupino is willing to sit through 4-5 hour meetings. Mr. Lupino stated he would. Commissioner Brooks asked if Mr. Lupino would attend all meetings. Mr. Lupino stated that he would make every attempt but would provide a

replacement if he were not available. Commissioner Brooks asked Mr. Lupino's philosophy on how a Board should operate concerning preparing a resolution. When and how should the attorney be involved and if the process should involve the manager. Mr. Lupino stated that it would be the Board's preference however, the attorney should be involved but the level of involvement determined by the Board. The manager would draft it and then legal counsel would review it.

Commissioner Bauman is concerned with the Sunshine Law issue and having government experience. Mr. Lupino stated that although government was not a primary area of his practice he doesn't anticipate there will be much difference but he is willing to learn. Commissioner Bauman asked if Mr. Lupino's learning curve would be considered off the clock and he desires to know all costs in advance. Mr. Lupino stated that he would provide an estimate prior to starting tasks for the Board's decision-making process. Commissioner Bauman asked how Mr. Lupino would distinguish a personal request for a Board request. Mr. Lupino stated that he and staff should follow official votes of the Board.

Commissioner Beaty asked if voted on directives would be the only directives followed. Mr. Lupino stated yes, that votes on directives would be best but he would use his discretion. Commissioner Beaty asked for Mr. Lupino's approximate fees. Mr. Lupino stated that his normal hourly rate is \$295 per hour but a proposed concept for attending regular meetings assuming he leaves his office at 3:30pm and is not home until 8:00pm would suggest \$100 an hour for attendance and for lightweight work perhaps ½ of his hourly rate, for travel he would reduce the hourly rate by a percentage and for litigation representation it would be charged at the full hourly rate.

Commissioner Beaty asked what Mr. Lupino would envision for most time spent working for the Board. Mr. Lupino stated that at present he would assume most of the time would be for attending meetings.

Chairman Tobin stated that his main concern is how to use the attorney's time efficiently and asked Mr. Lupino's views on interacting with the Board outside of the meetings. Mr. Lupino stated that if calls are often and would interfere with his normal business then something would need to be changed. Chairman Tobin asked his opinion on how to keep all members on the same page. Mr. Lupino stated that it is hard even if a summary of the conversation is forwarded to all with a one on one conversation it is almost impossible, however emails addressed to the attorney and copy to all and responses sent to all may be sufficient. Chairman Tobin asked if Mr. Lupino would feel comfortable in debates with Monroe County concerning loan agreements, ordinances and business with the DCA and FEMA along with meeting growth management plans and conditional use permitting for the construction of the plant. Mr. Lupino stated that he interacts with the BOCC on a regular basis and would feel comfortable dealing with the other government entities.

Mr. Sheets asked if Mr. Lupino was familiar with the requirements for reimbursement under Act 112. Mr. Lupino was familiar with them. Mr. Sheets asked about his representation of Metcalf and Eddy who was selected by the CCNA process to enter into a Standard Engineering Agreement and what his position would be if the contract comes before the Board. Mr. Lupino stated that he couldn't represent Metcalf and Eddy in front of the Board.

Chairman Tobin thanked Mr. Lupino and concluded the interview at 6:00 p.m.

Chairman Tobin recessed the meeting at 6:00 p.m.

Chairman Tobin reconvened at 6:13 p.m.

Chairman Tobin introduced Mr. Thomas Dillon at 6:15 p.m.

Mr. Dillon thanked the Board for opportunity to meet with them and then stated that as one of the newest attorneys in the Keys this was an opportunity he didn't expect, he looks forward to working with the Board. Mr. Dillon stated that he had provided his resume by email for consideration. Mr. Dillon stated that he had worked in public and private settings and had been involved with procurement, bidding and bid protests. Mr. Dillon had practiced in California and Alaska. Mr. Dillon stated that he believes he can make positive contributions to the KLWTD and that his philosophy is to assist his clients to achieve their objectives. He would concentrate on knowing the Board's goals and the individual member's goals as long as they are not illegal or immoral while doing them the most cost effective way. Mr. Dillon stated that he is not afraid to give business advice, along with legal advice, but knows the difference between the two. Mr. Dillon stated that most of what he has learned about the agency has been from newspaper articles. He would try to assist the Board in resolving the questions facing the board and he realizes the importance for a public agency to be cost efficient. Mr. Dillon stated that his proposed fee structure would be to charge \$100 per meeting and that prior to conducting excessive research he would determine if the Board as a whole has requested the task be done. Otherwise, an estimate of time required to complete a task would be presented to the Board for consideration. Mr. Dillon stated that he would familiarize himself with Florida Law at his own cost. Mr. Dillon also stated that he would charge \$95 an hour for the first 15 hours of work for the KLWTD and \$135 an hour for any hours over 15 a month and the contract would be at will. Mr. Dillon thanked the Board for their consideration and stated that he would be pleased to answer questions.

Commissioner Brooks asked how the number of hours for tasks would be determined. Mr. Dillon stated that it would be determined per task and he added that after talking with Chairman Tobin he had been informed that not many months have 15 hours of activity a month. Commissioner Brooks reconfirmed Mr. Dillon's prices as \$95 an hour for the first 15 hours per month, \$135 an hour for each additional hour and each meeting would be charged at a flat fee of \$100 per meeting. Mr. Dillon confirmed the information as correct.

Commissioner Brooks asked if Mr. Dillon would be willing to sit for a 5-hour meeting for \$100 per meeting. Mr. Dillon answered in the affirmative. Commissioner Brooks asked if Mr. Dillon had worked with similar boards. Mr. Dillon stated that he worked with public agencies in Alaska using their Sunshine and Public Stewardship Laws and has been on the Parks and Recreation Board for the City of Anchorage. Also, for last five years he consulted with the Alaska Supreme Court on procurement issues by email but did not attend board meetings. Mr. Dillon stated that none of Alaska State agencies have board meetings.

Commissioner Brooks asked Mr. Dillon if he was aware of how stringent the Florida Sunshine Law was. Mr. Dillon stated Alaska's Sunshine Law was not as strict as Florida's and that what he has read on the Florida law it is very strict. Mr. Dillon stated that with the Board meeting twice a month it should avert trouble.

Commissioner Wilkinson asked about Mr. Dillon's experience with Florida law. Mr. Dillon stated that he is lacking except for the research he had done in preparation for today. Commissioner Wilkinson asked if he had access to law libraries for research. Mr. Dillon stated that he has signed up for Lexus and Nexus. Commissioner Wilkinson asked if he had experience with local codes. Mr. Dillon stated that unfortunately his information on specific local ordinances is limited he has planning and zoning experience from other communities. Mr. Dillon plans on attending all KLWTD meetings. Commissioner Wilkinson asked if Mr. Dillon had litigation experience. Mr. Dillon stated that he does, but he tries to keep clients out of litigation because it is costly. Commissioner Wilkinson asked how additional expenses would be charged. Mr. Dillon stated that they are considered overhead and if an unusual expenditure arose it would be stated in the task estimate, otherwise Mr. Dillon would absorb the expense.

Commissioner Wilkinson asked about charges for attending meetings or function in the upper Keys. Mr. Dillon stated that it would be part of the 15 hours at \$95 but not travel. Commissioner Wilkinson questioned travel to Miami. Mr. Dillon stated that for an overnight stay he would request payment for the expenses but not for travel.

Commissioner Wilkinson asked about mundane versus in depth research. Mr. Dillon stated that reasonable request would be at the general rate. Mr. Sheets asked if Mr. Dillon would expect the Board to pay for his learning curve. Mr. Dillon stated that the learning of the local laws and agencies would be on his time.

Commissioner Wilkinson asked his charge on special research such as reviewing or requesting an attorney general opinion. Mr. Dillon stated it would be \$95 for the first hour unless it was over the 15<sup>th</sup> hour.

Commissioner Wilkinson asked the charge for reviewing routine resolutions that are constructed during the meeting. Mr. Dillon stated that it is considered part of the meeting.

Commissioner Wilkinson asked the charge for preparing a contract for an outside party. Mr. Dillon stated that it would be \$95 for the first 15 hours and then \$135 above 15 hours per month as it would be for litigation, and routine emails and phone calls from key staff.

Mr. Dillon stated that he would provide a monthly, itemized billing that would include the date, description and the time rounded to the nearest 10<sup>th</sup> of an hour.

Commissioner Bauman asked if Mr. Dillon would have a local office. Mr. Dillon stated within the next two weeks.

Commissioner Beaty asked Mr. Dillon about his procurement experience. Mr. Dillon stated that during his employment with Exxon he was responsible for all legal work concerning drilling in open seas. He had left Exxon in 1987 but when the Valdez spill

occurred in 1989, Valdez asked him to help with the legalities of the clean up. HE also managed the litigation for the resulting difficulties. Mr. Dillon stated that during his employment with MACtel he was responsible for all procurement and union personnel issues and that during his five years with the State of Alaska he reviewed all bid protests and handled the review of all contracts for the DOT Central Region, he also litigated bid protest, administrative hearings, and negotiated contract disputes over changed conditions.

Chairman Tobin stated that Mr. Dillon had an impressive resume and an excellent background in contracts and procurement and that as a new board the KLWTD wrestles with how to conduct business and some policy issues like getting information to all members is becoming a major problem. Chairman Tobin believes Mr. Dillon would be in the position of giving advice on how the Board is to act. Mr. Dillon stated that the Board as an elected body of five acts as one and tasks should come to staff that way as the act of one Board and that individual request must be looked at by interpretation of the Sunshine Law.

Chairman Tobin posed a hypothetical situation to Mr. Dillon concerning one commissioner writing a letter to Governor Bush on official stationery and signed in an official capacity. Mr. Dillon stated that unless a policy is in place covering the situation he would like to discuss the issue in front of the entire Board because he doesn't want to become an instrument of conflict and these type issues should be addressed prior to action and a policy in place that states that any individual using the name of the Board in an official capacity only if it represents the consensus of the Board.

Chairman Tobin asked Mr. Dillon how working for the KLWTD would fit into his professional practice. Mr. Dillon stated that he had no interest in padding hours to attain a set income and that when he relocated to the Keys he wanted to use his experience to teach and to consult with other lawyers concerning construction, procurement law and he would like not to work 40 hours a week.

Mr. Sheets asked if the \$100 charge per meeting would include agenda review and review of the minutes. Mr. Dillon stated that it would. Mr. Sheets asked if Mr. Dillon would consider negotiating a retainer with a fixed fee. Mr. Dillon stated that he would consider it.

Commissioner Brooks asked if a detailed invoice could be provided with billing by specific task. Mr. Dillon stated that he has a billing program called Time Slips and it has flexibility.

Commissioner Wilkinson stated he doesn't like being told things can't be done he likes to be given information on how things can be done. Mr. Dillon noted the objective on his resume "To help find and implement creative solution to complex problems." Commissioner Wilkinson stated that he doesn't want to have his first amendment rights infringed on. Mr. Dillon stated that he believes the citizens have elected the individuals to office, but to work as a Board it is appropriate for some individual actions and requests from individual members (unless the policy of Board suggests it) and it is a rare occurrence and to control cost and stewardship of public funds to have a majority of the Board assign tasks.

Discussion ensued on the use of an attorney and how the Board should access the attorney. Mr. Dillon stated that he would be uncomfortable being placed in a position for individual consultations with the attorney and there should be parameters set.

Chairman Tobin requested that Mr. Dillon forward samples of his opinions. Mr. Dillon stated that he would forward them as soon as possible. Chairman Tobin concluded the interview at 7:15 p.m.

#### D. Public Comment

Ms. Doris Kendall addressed the Board. She stated that she was glad she heard Mr. Dillon speak and that she had come to speak on behalf of Mr. Smits. Ms. Kendall believes that last year too much money was spent in legal fees and is glad to see other solutions being looked at and that cost is important. She believes the Board should have meetings with an attorney present for questions and answers.

There was no further public comment.

Chairman Tobin asked for discussion on the legal counsel selection. Commissioner Brooks stated that if the process of elimination were used he would be comfortable with a country type lawyer and that he came in favoring Mr. Smits and his experience. Commissioner Brooks doesn't believe working would lower legal costs with Mr. Lupino. Commissioner Brooks was very well impressed with Mr. Dillon and his ability to communicate with the Board. Commissioner Brooks ranked the candidates as Mr. Smits first, Mr. Dillon second and Mr. Lupino third.

Commissioner Wilkinson stated that Mr. Smits is experienced in the Keys and Mr. Dillon is great but he has concerns that the public would need to pay his learning curve. Commissioner Brooks ranked the candidates as Mr. Smits first, Mr. Dillon second and Mr. Lupino third.

Commissioner Bauman thanked Ms. Kendall for her input. Commissioner Bauman believes that Mr. Smits has the experience but did not answer questions directly and that Mr. Lupino too busy and more expensive and should not be considered further. Commissioner Bauman believes that although Mr. Dillon does not have Keys experience that Alaska had similarities. Commissioner Bauman ranked the candidates as Mr. Dillon first, Mr. Smits second and Mr. Lupino third.

Commissioner Beaty agreed with all comments made concerning Mr. Lupino and that the hourly rate was excessive. He also got the feeling that KLWTD wasn't going to be his main client and although very skilled as a litigator he is not the correct fit for the KLWTD at this time. Commissioner Beaty stated that he was impressed with Mr. Dillon and as new a sole practitioner KLWTD would be his main client. Mr. Dillon's rates are attractive and his experience very extensive. Also, Mr. Dillon answered the Board questions point blank. However, his inexperience in the Keys causes concern. Commissioner Beaty ranked the candidates as Mr. Smits first, Mr. Dillon second and Mr. Lupino third.

Chairman Tobin ranked the candidates as Mr. Dillon first; Mr. Smits and Mr. Lupino tied at second. Chairman Tobin is concerned with the potential conflict of interest with Mr.

Smits as a County Prosecutor and he is not comfortable with the political issues involved with his working with the school board. Discussion ensued on the potential conflict of interest. Chairman Tobin stated that Mr. Dillon should be able to get up to speed on Florida law with the tape series published by the Florida Bar.

Chairman Tobin asked the Board if they wished to vote or postpone action until the next meeting.

**Commissioner Wilkinson made a motion to select Mr. Dirk Smits as the KLWTD attorney. Commissioner Brooks seconded the motion. Chairman Tobin asked for further discussion. Commission Bauman comments that concerning Mr. Dillon's learning curve that if he has passed the bar and knows the law that learning the local agencies by attending various meetings to learn the players and by reviewing the interlocal agreements would provide enough history. Commissioner Beaty is concerned with how the public would perceive hiring someone not established in the area. Chairman Tobin believes that although new to the area, Mr. Dillon is local because he bought a house and has passed the bar. Discussion ensued on what constitutes being a local and how it would be perceived to hire someone who is not considered one. Chairman Tobin stated that the opportunity to hire a mature and experienced attorney should be taken advantage of and he would like to see the Board give Mr. Dillon a chance. Chairman Tobin stated concern with the KLWTD sending Mr. Smits as representative to appear in front of the BOCC. Discussion ensued on Mr. Smits possible conflicts of interest and his ability to represent multiple jurisdictions. Chairman Tobin argued that Mr. Smits was a Monroe County Prosecuting Attorney for the Code Enforcement Office and he believes that it would cause bad press. At the conclusion of the discussion Commissioner Beaty stated that he was inclined to change his ranking to consider Mr. Dillon first, Mr. Smits second and Mr. Lupino third. Chairman Tobin called for a roll call vote.**

<b>Commissioner Bauman</b>	<b>No</b>
<b>Commissioner Beaty</b>	<b>No</b>
<b>Commissioner Brooks</b>	<b>Yes</b>
<b>Commissioner Wilkinson</b>	<b>Yes</b>
<b>Chairman Tobin</b>	<b>No</b>

**The motion failed.**

**Commissioner Bauman made a motion to start negotiations with Thomas Dillon as Board Attorney. Commissioner Beaty seconded the motion. Chairman Tobin asked if there were any further discussion. Commissioner Brooks asked what the conditions of the contract would be. Commissioner Bauman requested that the manager be directed to draft the document. Mr. Sheets stated that no matter who is chosen a contract hammered out by the team, which should consist of a Board member along with the manager and with staff assistance with a scope defined and agreed to by the Board. The terms can be set for the purpose of negotiations and the candidate could be asked for a retainer for certain services and a fixed fee similar to the contract with the manager. Commissioner Brooks suggested negotiating both and bringing back both offers. Chairman Tobin requested that an "Option A" and "Option B" be presented. Commissioner Brooks stated that if**

**the motion passed a member of the Board should be selected to work with the manager. Chairman Tobin asked for any further discussion. There being none he called for a roll call vote.**

<b>Commissioner Bauman</b>	<b>YES</b>
<b>Commissioner Beaty</b>	<b>YES</b>
<b>Commissioner Brooks</b>	<b>YES</b>
<b>Commissioner Wilkinson</b>	<b>NO</b>
<b>Chairman Tobin</b>	<b>YES</b>

**The motion carried.**

**Commissioner Brooks made a motion to appoint a member of the Board to the negotiation team. The Chairman stated that he would like to appoint Commissioner Brooks. The motion failed due to lack of a second.**

**Commissioner Beaty motioned to appoint Commissioner Brooks to the negotiation team. Chairman Tobin seconded the motion. With no further discussion the motion was unanimously approved.**

E. Additions, Deletions or Corrections to the Agenda

F. Minutes – Draft August 13, 2003; Draft August 27, 2003; Draft Sept. 3, 2003;  
Draft Sept. 17, 2003

SEE BELOW

G. Local Legal Counsel Interviews

SEE ABOVE

1. 4:00 p.m. Mr. Dirk M. Smits
2. 5:00 p.m. Mr. James Lupino
3. 6:00 p.m. Mr. Thomas Dillon

H. Action Items

1. Approval of Resolution 2003-20 to Provide Copies of KLWTD Documents to the Key Largo Public Library

Commissioner Brooks requested that the resolution be reworded to include that the copy would be sent to the Library at the same time as it is to be provided to the Board. Discussion ensued on the process to be used for delivery.

**Commissioner Brooks made a motion to approve the resolution as stated. Commissioner Bauman seconded the motion. All were in favor and the motion was unanimously approved.**

2. Approval of the October 8, 2003 Payments Pending List

Commissioner Brooks stated that the Weiler invoices should be itemized and time spent on activities given even when billed at a flat rate. Commissioner Bauman asked if

a status on payments and what funds are available in the bank could be provided. Mr. Sheets stated that the year-to-dates would start next fiscal year. Mr. Sheets stated that items aren't on the payment list unless there is cash to cover the payments. Commissioner Bauman stated that the financial status had been requested previously and quarterly would be sufficient also, the issue on Weiler and GSG fixed fee contract with set monthly fees should include time sheets and that although they are not a requirement or as a condition of payment as a policy issue and for monitoring they should be included. Mr. Sheets stated that the information would be included with future invoices. Chairman Tobin stated that the Board needs to know what the staff is doing. Chairman Tobin asked if it was the consensus of the Board that all vendors including flat fee contracts provide enough detail to know what the staff is doing. Commissioner Wilkinson stated that it needs to be placed into the policy. Commissioner Brooks believes that getting the information would give the Board a better idea on what has transpired between meetings.

Mr. Dirk Smits returned to the meeting at 8:30 p.m.

Chairman Tobin informed Mr. Smits that after lively debate Mr. Thomas Dillon was chosen to begin negotiations with. Mr. Smits thanked the Board for the opportunity to interview.

Chairman Tobin asked for any further comments on the payment pending list.

**Commissioner Bauman motioned to approve the payment pending list. Commissioner Wilkinson seconded the motion. All were in favor and the motion was unanimously approved.**

I. General Manager's Report

1. Status Report on the FEMA Environmental Assessment
  - a. Low and Very-low Income Assistance Program
  - b. Site Mitigation

Mr. Sheets stated that most of the information was covered in the 4:00 p.m. conference call and that he would bring back the low-income implementation plan for Board consideration. Mr. Sheets stated that nothing is required prior to the public hearing for site mitigation but there needs to be an understanding of the cost impact for the replacement of what is removed by construction. Chairman Tobin stated that a decision on the conservation easement may be necessary and that a packet of information from Mark Rush had been received. Chairman Tobin also stated that a letter from Fish and Wildlife requesting a deed restriction should be looked at carefully. Mr. Sheets was directed to discuss it with Tim McGarity and George Garrett.

2. Discussion for possible action Proposed GSG and WEC Scope of Service Change
  - a. KLWTD Work Authorization WEC 03-01 (Amendment 1) with Weiler Engineering Corporation for the KLTV Project
  - b. KLWTD Work Authorization WEC 03-02 (Amendment 2) with Weiler Engineering Corporation for the KLP Project

c. KLWTD Work Authorization GSG 03-01 (Amendment 1)  
with Government Services Group, Inc. for the KLP & KLTV  
Projects

Mr. Sheets stated that the amended work authorizations were drafted at the direction of the Board as described in the memorandums that were provided. The most significant changes were to include Mr. Charles Fishburn as a full time employee of GSG who would be conducting the KLWTD project inspection service.

Mr. Sheets stated that at the special meeting to be held on the 17<sup>th</sup> of October would address the proposed change order for Haskell on the initial design phase.

Chairman Tobin asked the manager for an explanation of a fixed fee not-to-exceed option and a time and materials not-to-exceed option. Discussion ensued on the two options. Chairman Tobin asked that if a not-to-exceed option was used if less hours are used would KLWTD be charged a flat fee. Mr. Sheets stated that with a time and materials option when the not-to-exceed amount is reached work on the project would stop and the Board would be asked for additional funds to complete the work. With a fixed fee (Option B) the fee is the same no matter if 3 hours a month are worked or 20 hours it can involve risks but under no circumstance would the Board be requested for additional funds.

Chairman Tobin expressed concern and stated that he was unhappy with the email agreement between himself and Mr. Sheets. Discussion ensued. Mr. Sheets stated that he would submit to the Board as district manager a report that will show that GSG staff has given the Board many hours of service for the flat fee being received.

Chairman Tobin stated that he would be reviewing the tapes of the meetings and the email communications concerning this issue.

Mr. Sheets stated that the discussion on procedures could be discussed at present or continued.

Mr. Sheets reviewed the presentation outline for the special meeting to be held on October 17, 2003 with estimated time for each topic and the order of the presentation.

Commissioners Bauman and Wilkinson believe the secondary treatment process selection should be made on the 17<sup>th</sup> of October.

### 3. Other Items

There were no additional general manager items.

#### J. Legal Counsel's Report

There were no legal counsel items.

#### K. Engineer's Report

There were no engineer's items.

L. Commissioner's Items

SEE ABOVE

M. Meeting Adjournment

Commissioner Bauman made a motion to adjourn the meeting and Commissioner Wilkinson seconded the motion.

Chairman Tobin adjourned the meeting at 9:00 p.m.