

November 17, 2009

Chairman Judah: We'll Get Started With Our Board Meeting Of November 17th.

Hello To Everybody.

We'll Start Out With The Invocation Of Pastor Tom Willetts.

If We Could All Please Rise.

Good Morning, Pastor.

Yes, Commissioner Hall.

Comm. Hall: Keep In Our Hearts And Thoughts, Nancy Wheeler Had A Loss In Their Family.

Her Father.

And Howard Senior, Her Brother, Is In The Hospital.

If We Could Have Her In Our Prayers, I Would Appreciate It.

Let Us Pray.

Almighty God, Who Has Given Us This Good Land For Our Heritage We Ask That We May Always Prove Ourselves Of People Mindful Of Your Favor And Glad To Do Your Will.

Bless Our Land With Honorable Ministry, Sound Learning And Pure Manners.

Save Us From Violence, Disorder And Confusion, From Pride And Arrogance And From Every Evil Way.

Defend Our Liberties And Fashion Into One United People, The Multitude Brought To This Land Out Of Many Nations, Races And Tongues And With Your Spirit Of Wisdom, Those Who In Your Name We Entrust The Authority Of Government, Especially These Our County Commissioners, That There May Be Justice And Peace At Home, And At Through Obedience To Your Law We May Show Praise To All The People Of The Earth.

Fill Our Hearts With Thankfulness And In A Day Of Trouble Suffer Not Our Trust In You To Fail, All Of Which We Ask Through Jesus Christ Our Lord, And We Ask Our Prayers For Family Members Who Struggle With Grief.

Gracious Lord Be With Them.

Grant Them Your Peace And Health, In Jesus' Name We Pray.

I Pledge Allegiance To The Flag Of The United States Of America.

And To The Republic For Which It Stands, One Nation, Under God, Indivisible With Liberty And Justice For All.

Chairman Judah: Thank You, Pastor.

Ok, I Think The First Order Of Business Today Is The Annual Reorganization Board Of County Commissioners.

Clerk Of Courts.

Good Morning, Ray.

This Is A Very Quick Thing.

I Think We All Are Familiar With It.

There's No Second Required.

Nominations From Each And Every One Of You Are Accepted.

Upon A Voice Vote, Individual Voice Vote, You Will Select A Chairman And My Job Will Be Done And You Can Select Your Vice Chair.

Are There Any Questions About The Reorganization? Dandy.

Are There Any Nominations.

Chairman Judah: I Would Like To Nominate Commissioner Tammy Hall.

Any Other Nominations, No Seconds Are Required.

Comm. Mann: I Would Like To Nominate Commissioner Bigelow.

We Have Two Nominations For Chairman, Commissioner Hall And Commissioner Bigelow.

Tammy And Brian, Any Others? Having None.

Comm. Bigelow: I Think I'm Going To Respectfully Decline The Nomination Because I Think I Already Know Where This Is Going.

Frank I Appreciate It But I Think I'll Decline It, Thank You.

Does The Nominator Retract? Comm. Bigelow: Yes, I Did.

I Don't Think It's A Choice.

I Will Call For A Voice Vote, Commissioner Bigelow Aye Commissioner Hall.

Comm. Hall: Aye Commissioner Mann No.

Comm. Hall: Don't We Have To Nominate The Vice Chair.

Chairman Judah: There Is A Tradition You Have To Put Up With.

Commissioner Hall.

[Applause] If I May, You Know, There Have Been Comments Made In The Print Media And A Lot Of Anticipation Of Discussions Concerning The Rotation Of The Chair And Vice Chair And Who Is Going To Preside On This Board.

We All Try To Work Together As Best We Can.

I Think At This Point In Time A Deep Respect And Courtesy For Fellow Colleague Who Has Presided On This Board For A Number Of Years, And Certainly Has Demonstrated Incredible Commitment To Public Service And Probably Will Have A Last Opportunity Before He Retires In 2012 To Being In Yet One More Election, I Would Like To Nominate Commissioner Bob Janes To Be The Next Vice Chair.

Comm. Hall: We Have To Do A Roll Call Vote Also On This, Don't We? So Is He Going To Come Back And Do That For Us.

Actually The Chair Is Supposed To Conduct, Ok Then I Have One Nomination For Vice Chair Which Is Commissioner Bob Janes, Do I Have Any Other Nominations On The Floor, Seeing None I'll Close The Nominations And We'll Take A Roll Call Vote, Commissioner Bigelow.

Comm. Bigelow: No.

Comm. Hall: Commissioner Judah.

Chairman Judah: Aye Commissioner Mann.

Comm. Mann: Aye.

Comm. Hall: And I Vote Yes As Well.

With That Over, Thank You All For Your Vote Of Confidence This Morning.

We Wanted To See Where We Are For Today And Then We'll Switch Them Around.

Chairman Judah: Item Been Two Long Years.

Comm. Hall: Ok.

Chairman Judah: If It's Ok.

Comm. Hall: That's Fine, Not A Problem.

Chairman Judah: I'm Sorry, I Didn't Mean To Cause Any Inconvenience There.

Comm. Hall: That's Ok.

I Appreciate The Audience Giving Us A Chance To Get Organized.

Ok, We'll Move On To Resolutions.

This Morning I Have A First Resolution I Believe We Have The Walk-On On Resolution, Is That Correct? This Morning It's My Honor To Recognize The Heart Of Hendry Events.

Is Leah Here? You Have Some Guests I See, Howard Wheeler Is The Audience.

Do You Have Anyone Else From Your Board? If You Would Step Forward With Gina? Oh, Yes And Some Other Folks.

Ok, Great.

You Know Recognizing Historic Opportunities, We County Fort Meyers Is A Wonderfully Historic Community And We've Had The Privilege To Be Enriched By Many, Many Tribute, The Edison Home, The Burrows Home, All Kinds Of Significant Area.

So We're Very Proud To Have The Historic Trust Recognize What's Happening On Hendry Street With The Renovation Of Our Historic Trust Structure.

It's My Pleasure And Honor To Read To This You To Morning.

Whereas On Wednesday November 18th, 2009.

The Lee Historic Trust Of Preservation Will Host The Heart Of Hendry.

A Celebration On Hendry Street Showcasing Several Restored Historic Buildings And The Grand Opening Of The Seminal Lodge.

Whereas Seminal Lodge Is A Historic Museum To Share His Family's Collection Of Seminal In This History, And Whereas The Heart Of Hendry Event Will Mark The Grand Reopening Of The West Brooke Building, Originally Built In 1946 And For Historic Preservation Also Celebrates Open Houses Of Fitzgerald With Monar And Associates, Courtyard Shop And The Reopening To The Bar.

An Whereas Preservation Is The Ultimate Recycling.

Now Therefore It Be Resolved By The Board Of County Commissioners Does Here Proclaim

November 18th As Hart Of Hendry Day And Recognizes Prehistoric Preservation.

Signed By Our Past Chair, Commissioner Ray Judah.

If We Could Take A Peculiar.

[Applause] And Then We'll Hear From You.

And There's Mr. Strainhorn And We Should Recognize Another Historic Event On The 18th Which Is Howard Wheeler's Birthday.

Comm. Mann: There He Is, A Living History.

Comm. Hall: Maybe Get The Girls In The Middle And The Guys At The End? I Would Love That.

One, Two, Three.

Thank You.

If We Could Hear A Few Words From You And Your Guest That Would Be Great.

Thank You.

Thank You So Much For This Acknowledgment On Behalf Of Myself And The Entire Board, We Really Thank You For This Acknowledgment.

When Ever Historic Preservation Is Acknowledged In Lee County, We Feel We're Fulfilling Our Mission Which Is To Education The Importance Of The Relationship Between Historic Preservation And A Revisal Downtown In Particular.

We Hope That We'll See You All Tomorrow At Our Event.

Thank You Again.

Comm. Hall: Thank You, Gina.

[Applause] Next We Have A Walk-On Resolution.

Commissioner Judah Recognizing Action By Citizens.

Chairman Judah: Thank You Very Much.

This Is Really A Special Opportunity For Me Personally And I Want To Thank And Ask That Jason Burgess And A Number Of Others Including Eric Schotz, Jerry Grey.

This Is A Long-Time Coming Because Of The Heroic Event That Took Place On October 10th.

What Makes It More Meaningful For Me Is My Own Wife Kristin Works With A Case Manager At Shell Point Retirement Community, And It Was One Of Her Residents.

That You All Pretty Much Put Your Life On The Line Quite Frankly In A Very Unusual Circumstance.

These Folks Were Involved In A Boating Trip.

Were Actually Fortuitously In The Boat, A Little Canal Sprayed By Mangroves And The Shell Point Campus, And How In The Heck Do You Ever Happen To See The Smoke Is Beyond Me, But Obviously The Smoke Led To A Much Greater Danger With Fire In This Complex.

And These Good Men And Women Actually Ended Up Immediately Responding.

And Getting The Gentlemen Out Of Harm's Way, Otherwise He Would Have Burned Up With The Building And There Would Have Been Many Other People In That Same Building That Would Have Had Their Lives In Danger.

But If I Could Read The Resolution, We Are Proud To Have You Here Today.

Whereas On October 10th, 2009 At 1:30 P.M., Jason Burgess, Erica Shots, Jerry And Gail Grey Were Boating Near The Shell Point Retirement Community When They Heard A Fire Alarm Coming From The Main Building.

Whereas They Saw Smoke Coming From A Unit On The Second Floor, And Then Motored Their Boat To The Nearest Sea Wall, Whereas Jason Burgess And Mark Owen Ran To The Second Floor And Entered The Unit Only To Find 92-Year-Old Herbert Hanson With Burn Injuries.

Whereas Jason Burgess Carried Mr. Hanson Out Of The Unit By Following Voice Directions From Mark Owens.

Whereas Mark Owens Stayed With Mr. Hanson, Jason Burgess Re-Entered The Unit To Extinguish The Fire While Waiting For The Fire Department To Arrive On The Scene.

Whereas Erica Shots, Jerry And Gail Grey Were Supportive In Aiding, By Directing The Boat To A Sea Wall Where Jason And Mark Could Access The Property By Clearing Bystanders From The Path Of Incoming First Responders, By Calling 9-1-1 And Then Communicating With Emergency Personnel On Scene As To The Location And Condition Of The Patient.

Now Therefore It Be Resolved By The Board Of County Commissioners Of Lee County Florida That We Here Recognize And Praise Jason Burgess, Erica Shots, Mark And Julie Owens, Mark And Gail Grey For Exemplarily And Heroic Service To A Citizen In Need Of Assistance In Lee County And Urge All Citizens To Recognize These Six Individuals For Outstanding Commitment To One Of Their Fellow Citizens.

Executed This 17th Day Of November 2009, And As Former Chair Of The Board Of County Commissioners, I Was Proud To Sign This Resolution.

I Would Like To Present The Resolution To All Of You And Great To See Chief Kinsey Here From The Fire Department.

[Applause] Congratulations.

Thank You.

Nice To See You And Congratulations.

Thank You Very Much.

Nice To See You And Congratulations.

Ready? Ready.

And One More.

Thank You.

We Would Love To Hear From You.

We Will Love To Hear From You.

Thank You Very Much For This.

This Is Wonderful.

We're Very Grateful For It.

I've Got A Wonderful Group Of Friends.

Something Like That Happens Once In A Lifetime Probably, But The People That Were On That Day, I Mean, The Way Everybody Responded And Reacted, It Was Just A Miracle.

We Thank God For Everything Turning Out The Way It Did And We're Very Grateful That Mr. Hanson Did Survive The Fire.

However, He Did Pass Away November 1st, Which We Regret To Say.

But, Anyway Thank You All Very Much.

I Would Also Like To Introduce My Chief, Chief Phil Kinsey.

He Will Like To Add To This.

Thank You, Sir.

Good Morning.

With The Board's Indulgence, I Would Like To Introduce Uniform Command Staff That Stand In Support Of Firefighter Burgess.

I Have Assistant Chief Kraft, Deputy Chief Cyber, Deputy Chief Ryan.

[Applause] And I Would Just Like To See On Behalf Of The Fire District And Myself, We're Very Proud Of Firefighter Burgess, And He Represents What Is Inherent, And The Other Individuals.

He Represents What's Inherent In All Firefighters.

And He Just Did What Firefighters Do.

So, Thank You Very Much.

And We're Very Proud.

Comm. Hall: Thank You So Much.

[Applause] Chairman Judah: Thank You, Commissioner Hall.

Comm. Bigelow: Chief Kinsey, Before You Leave, Can I Just Have A Word? I Want To Thank Everyone For Being Here.

It's Truly An Honor To Be In The Same Room With Heroes And The Sure Sign Of Heroes Is Courage And The Humility That Comes After The Act.

And Wanted To Just Let You Know That I See A Lot Of Heroes Here Today And I'm Humbled In Their Presence.

But Madam Chair And Members Of The Board, I Want To Also Point Out Something That Occurred The Friday Before We Passed The Complete Streets Resolution.

I'm Sorry To Put You On The Spot This Way Chief Kinsey But I Think It's Worth Noting That The Last Citizen As A Pedestrian To Be Hit And Killed In This County Was A Relative Of Chief Kinsey's And Actually My Neighbour Mary And Grant Finger, It's Their Nephew A 21-Year-Old Who Was Hit And Struck On Harbour Drive On Pine Island.

And, Chief Kinsey, I Just Want To Express My Sorrow To You For That.

The Good News Is Though That We've Done Something To Try To Address That Problem And Hopefully We'll Prevent Future Unwarranted Deaths To Occur.

So, I Just Wanted To Take The Opportunity To Express My Sorrow To You And Your Family.

I Appreciate That Very Much, Sir.

Comm. Hall: Next We'll Go To The Recap.

We Have An Item To Be Revised Requested Reads As Follows With The Listing Of The Approval Of The Minutes.

Can I Have A Motion To Accept The Revision I Have A Motion By Commissioner Janes, A Second By Commissioner Judah.

Any Further Discussion? All Those In Favor? Opposed? The Motion Carries And Then We Have Two Additional Walk Johns And With That We Go To Public Comment On The Consent And The Administrative Agenda.

Our First Comment Is Donna Moore.

Good Morning, Donna.

We Will Be Followed By Leo Amos.

Good Morning.

This Is A Statement On Behalf Of The Real Estate Owners And Brokers On Boca Grande.

And They Include All Of The All Of The Real Estate Offices On The Island.

And They Wish To State That They Are Not Aware Of The New Interpretation Of The Gasparilla Island Conservation Act That Denies Owners Of Two Properties, One Being Substandard Within Existing House, And The Other A 75 By 100 Foot Vacant Lot, With A Mud And Verification Letter.

With Separate Strap Numbers, The Right To Build Or To Sell Unless They Combine The Two Properties, Thereby Having The Value Of Their Properties Only Because The Buyers Titled Each Property In The Same Name.

There Has Been No Effort That We Are Aware Of, That Either The Gicia Or The County Has Made To Inform The Real Estate Community.

An We Feel There's No The Gicia, Nor Would I Assume The County Commercials Have Any Interest In Taking Away The Rights Of The Owners.

And That's All I Wanted To Say, Thank You Very Much.

Comm. Hall: Thank You.

Leo Amos.

Good Morning.

Who Will Be Followed By Jennifer Heckler.

Good Morning, Commissioners.

Congratulation On The New Appointees.

First Off, I Want To Talk About Woodford Flats, But I Want To Congratulate You All For What You Did On Blind Pass.

The Problem I Have With Woodford Flats Is Going Through Some Of The Records, Going Back To July 20th Of 2007, There Was A Letter Written By Mr. Neil To Katelyn, In This Letter It Was A Response For Additional Information, R.A. Number Five.

And I Would Like To Read This To You Because It's Kind Of Interesting As To Where We're Going.

The Comments State That Sea Grass Density Is Greater Than 1%.

And Exists As 20% Of The Dredged Footprint.

Using Cover, The Footprint Of The Dredging Is 1614 Square Feet Of Actually Sea Grass Backed Of A Total Dredge Foot Of 617,698 Square Feet.

This Is .26% Folks.

The County Greece Provide Mitigation In The Form Of Sea Grass Protection In The Area.

We Recognize That This Potential To Provide A Resource Benefit As Well As A Public Benefit.

The Staff Is Consistently Indicated That Protection Of Existing Resources Was Preferred Restoration.

The Will Be A Major Effort To Develop Getting Approval For N.W.R. Development Of The Unit Management Plan, Approval Use Agreement Between U.S. Fish We'll Life Service And A Tiitf Approval Of Posting Plant.

Insulation Markers, Meant All These Actions Markers In Place Prior Completion Or Construction Or Continue.

Folks, All The Sea Grass Lost, The Documents That I've Got From Pep Says That 4.9 Acres Only Is To Be Under This Zone.

Not 474.

Lee County Has.

Out Here To Mark All This.

I've Had Conversations With Ken Haddad.

And Report I Got Back From Him, He Says All These Signs Out Here Are Illegal.

They Don't Have The Florida Statute Number On Them.

They're Not Recognized By Florida State, Florida Fish And Wildlife Commission.

They're Illegal.

And You've Posted All 474 Acre Of It.

Go Back To It And You Will Find There's Only 4.8 Acres.

There's A Lot Of Things Wrong Within This Whole Agreement.

I Don't See How You Came From A Lease Agreement With No Input From Anybody To The U.S. Fish And Wildlife Service Management.

There's Legal Problems.

It's Unbelievable.

Thank You Leo.

Jennifer Heckler Followed By Kate Gooderham.

Good Morning.

First I Would Like To Con Garage Rate Commissioner Hall And Commissioner Janes.

I'm Here On Behalf Of The Conservancy Of Southwest Florida And Our Southwest Members And We're Here Today To Express Our Support For The Proposed Lee County Resolution Including D.E.P. Reclassification Proposal To Create New Splashable An Unswimmable Water Quality Standards.

These New Classifications Will Not Only Degrade Water Quality Standards Of The Water Bodies That They Apply To.

But Make It More Difficult To Reach Water Quality Downstream In The Natural Rivers That Those Water Bodies Flow Into.

Also, Lowering Standards And Water Bodies Closest To Blue About The Sources Will Diminish Our Ability To Properly Source Control Measures, Passing Additional Clean Up Cost From The Private To The Public Sector.

We Need To Capture Blue Departments At Their Source, Keeping Them Out Of All Of Our Waterways.

Weighing In On This Issue In Support Of Maintaining And Needing Current Swimmable Standards Is One Of The Most Important Things That You Can Do To Protect Public Health And Safety, As Well As Lee County Quality, Economy And Schedule Of Life.

As Such, We Urge You Today To Vote, To Approve The Proposed Resolution, And To Ensure

That D.E.P. Maintains And Meets Current Water Quality Standards An Classifications Of Use.

Thank You.

Comm. Hall: Thank You.

Kate Gooderham.

Good Morning.

My Name Is Kate Gooderham And Good Morning To All Of You, And Congratulations To Our New Chair And Vice Chair.

Today I Am Here On Behalf Of The Bayou, A Non-Profit Organization Come Priced Of Members From Northern Sanibel And Southern Captiva, They Have 300 Members And They Would Like To Urge You To Strongly Support Consent Agenda Item 8-A The Woodford Flats Management Area Lease Agreement.

We Overwhelmingly Favor, In The Management Area And Has Long Been A Slow Speed Zone.

It Is Very Shallow And Perhaps Scarred And Needs Restoration.

It Is A Popular Fishing Area, And Very Popular For Can Back Fishing.

This No Motor Zone Does Not Inhibit Access To Blind Pass.

The Wildlife Refuge Already Manages Lands Effectively.

It Is A Very Good Partnership For Lee County.

We Encourage You To Support This.

We Will Also Like To Say, To Concur With The Previous Speaker, That Blind Pass, That Project Has Been Tremendously Successful.

You Should All Consider It One Of The Wonderful Things That You Have Accomplished While In Office.

If You Have Not Been Out To See It, It Is Amazing.

The Wildlife Out There Is, It Even Surprises The People Who Said That There Was Going To Be Wildlife All Over The Place.

The Fish And The Birds It's Just Absolutely Amazing.

We Encourage You To Take A Trip Out There And Take A Look At It.

Again, Getting Off Track A Little Bit.

About Woodford Flat Management Area Which Is Part Of The Blind Pass Project.

Thank You.

Comm. Hall: Thank You Kate, Anyone Else In The Public Who Would Like To Comment On The Consent Or Administrative Agenda.

Seeing No One I'll Close Public Comment And Go Back To The Board For Items To Be Pulled.

Commissioner Bigelow.

Comm. Bigelow: None.

Comm. Hall: Commissioner Judah.

Chairman Judah: 10-A, 12-A, 12-C, 12-D.

Thank You.

Comm. Bigelow: You Lost Me.

Comm. Hall: 10-A, 12-A, 12-C, 12-D.

Chairman Judah: Yes.

Comm. Hall: Commercial Mann.

Nigel: None.

Comm. Hall: We'll Start With Commissioner Judah.

Chairman Judah: I Would Like To Move That Item.

Comm. Hall: A Motion By Commissioner Judah.

Comm. Janes: Second.

Chairman Judah: In This Case, \$385 From The Family Memory Of Larry Collins For Lee County Emergency Medical Service And I Wanted To Note That And Appreciate The Contribution.

Comm. Hall: Thank You.

Any Further Discussion? All Those In Favor? Opposed? The Motion Carries Unanimously.

12-A.

Chairman Judah: I Asked To Pull 12-A With 12-C.

It's My Understanding These Projects 12-A Going Buckingham Road Paved Shoulders, And 12-C To The Widening Of Cypress Mountain Parkway Are All Made Possible Due To Federal Stimulus Dollars.

That's Correct Commissioner.

Chairman Judah: It's Important That While Some People Seem To Want To Run Away Or Chastise The Intuition Of Federal Stimulus Dollars, What We Need To Take Note Is These Moneys, Particularly In These Two Instances Are Critical For Infrastructure.

We Need To Improve And Enhance Our Quality Of Life, And Also Provide Quite Frankly Critical Jobs.

Providing People To Receive Their Paychecks And Feed Their Families.

And I Think We Should Be Supportive Of The Fact That When Federal Stimulus Dollars To Be Used In Areas Of Demonstrated Need It's A Good Thing.

With That I Would Like To Move 12-A.

Comm. Hall: I Have A Second By Commissioner Janes.

Further Discussion? All Those In Favor? Opposed? The Motion Carries Unanimously.

Chairman Judah: And 12-C, The Widening Of Cypress Parkway.

Actually Have To The Development There, Heritage Palms I Believe.

I Would Like To Move That Item.

Comm. Janes: Second.

Comm. Hall: Is There Further Discussion? Comm. Bigelow: Yes, You Had Something Else.

Chairman Judah: No.

Comm. Bigelow: Ok.

Just Caused Me To Remember, What Are We Doing With Respect To Lighting Along Six Mile Cypress.

Are We Going To Include That In This Project? We've Discussed It Before And I Think If I Recollect Is That We Were Going To Light It From The East Side Of The Road And Shine The Lights West? The Final Resolution Was To Light The Northern End When The Commercial Development Is, There Would Be No Lighting Other Than At The Intersection Scheduled To Be Signalized.

Ok.

And Then Long Range Our Commitment Is To Not Light It.

Is That Your Understanding? That's Our Understanding.

That's Our Plan.

Comm. Bigelow: All Right, Thank You, Appreciate It.

That's All.

Comm. Hall: Further Discussion? All Those In Favor? Opposed? The Motion Carries Unanimously.

Chairman Judah: 12-D Caught Me By Surprise.

This Is For Use Of Public Rights Of Way.

For Qualified Organizations.

If I Understand Correctly This Is To Go To A Public Hearing For Changes To The Ordinance.

Yes, This Is Just Advertised For The Public Hearing.

With Too Much, I Thought We Had Already Addressed This With Those Who Can Use The Public Rights Away Would Be Public Safety Agencies, That Know How To Conduct Themselves In A Safe And Responsible Way In Raising Money For Charitable Organizations.

I Don't Think We Want To Go On That.

This Is Greg Can Explain The State Statute Aspect Of It And I'll Address The Safety Part Of It.

Good Morning, Madam Chair.

Commissioner Judah.

There Was A Change In The State Statute That Basically Sort Of Laid Out Who Can Solicit In The Right Of Ways.

And Basically If You're A 501-C3 And You Have Certain Other Prerequisite And Safety Plan And So Forth, Those Are The People That Would Be Allowed To Solicit In The Public Rights Of Way.

Unbelievable State Legislature Has Done It To It Again.

Jeopardizing People's Lives.

I Thought The Only Folks Out There Would Be Those Involved.

Well In The Past Lee County Had Directed Certain Firefighters And Police Officers Those People That Work In The Rights Of Ways Frequently, You Know Were Allowed To Conduct Solicitation, But Since State Statute Changed, It Kind Of Lays Out Who Can And Who Can't Or Who Can, Actually.

And That's What The State Direction Is.

And We're Just Trying To Update Our Ordinance.

There's No Conflict.

It's Been Brought To Our Attention, We've Had In Particular One Veteran's Organization From The East Coast As That One To Conduct Advertising In Our Rights Of Way.

And They Pointed Out That They Have The Right To Do This.

Because They Need All The Prerequisites And So Forth And We Researched The Issue And They Were Correct.

And So What I'm Doing, What I Like To Do Is You Know, Adjust Our Ward So There's Not A Conflict With The Statute.

Chairman Judah: This Is Going To Go To Public Hearing.

I Believe It's December 8th.

Chairman Judah: This Is Going To Open Up A Can Of Form.

I Thought We Had It Worked Out.

Is The State Going To Incur The Liability.

Nope.

Chairman Judah: Of Course Not.

There Are Good Things, Just Not Any 051-C3 With Step Into The Right Of Way, There Are Controls There This That Respect.

Chairman Judah: It's Hard To Enforce.

Thank You Ma Game Chair.

Comm. Hall: Thank You.

Comm. Bigelow: I Wanted To Ask A Question.

To The Attorney.

If I Understand Correctly, I Heard You Correctly, We Don't Have A Choice In This Matter.

It's Either Be In Violation Of State Statute Or Local Ordinances, Right? Correct.

But Part Of The Ordinance Will Be To Stiffen, If You Will, The Regulatory Conditions? Well The Ordinance Is Basically Mirroring The State Statute.

Comm. Bigelow: Oh The State Statute Also Says What It Is We Have To Require.

Correct.

Comm. Bigelow: But We Could Go Above And Beyond It, No? If We Want To Make It.

You Have To Be Careful In Making It More Restrictive.

Commissioner Harry Campbell For The Record.

One Of The Things We Will Do Is Cop Back To You With An Administrative Code Which Outlines A Little Bit Of The Process, As This Goes Through Lee Cares, It Will Be Signed Off Just Like Any Special Event.

But There Will Be A Series Of Requirements Regarding The Safety.

Must Have A Safety Plan.

Must Wear Safety Vest.

Must Have Advanced Warning.

So There Will Be A Process In Place That Will Improve Safety Other Than What's Happening Today.

Because There Are A Number Of Different Agencies Out There With No Permit.

No Approval.

We May Not Be A 501 C-3.

One Of The Thing We're Going To Try To Do Is Try To Address That.

Comm. Bigelow: One Last Question.

Will This Also Allow Us To Specify Or Limit The Number Of People That Can Wander Out Amongst The Cars Because I've Noticed.

One Of The Things That We're Going To As Part Of The Administrative Code Process Is We're Going To Require Them To Actually Have A Spot Or Actually More Than One Spot Or

To Watch The Traffic Signal And To Tell The Person That The Light Has Gone To Yellow For The Conflicting Movements.

They Will Know That The Light Is Going To Go From Red To Green For The Movement, There In Traffic.

We're Not Going To Allow Them To Stay In And Narrow Medians.

The Four-Foot Median Will Be Prohibited.

They Can't Stand Out There And Hold The Sign Or Collect Money, So We'll Have Specific Safety Restrictions Which Would Be Consistent With Anybody Working In The Right Of Way.

Comm. Bigelow: Thank You.

Chairman Judah: Do You Know Whether Or Not This Particular Amendment To A Bill Or A Bill Itself Passed By Two-Thirds Majority? Is This An Unfunded Mandate Not Approved By Two-Thirds Of The Legislature.

Because I Would Like To Challenge The Constitutionality If It Wasn't Approved By Two-Thirds Majority.

I Can't Respond To That At This Point In Time.

I Know It Was Approved By The Legislature Of July Of 2007.

Not By Two-Thirds.

I Wouldn't Think So.

Chairman Judah: You Don't Think It Was.

I Don't Believe So Off The Top Of My Head But I Would Have To Research That Issue.

Chairman Judah: It Imposes Costs On The County.

If It's An Unfunded Mandate We Ought To Challenge It.

Any Rate, Just A Suggestion The This Board, I'm Not Going To Go For Word To Public Hearing Unless Whether Or Not We Know It's An Unfunded Mandate.

Comm. Hall: Ok, So, Any Further Discussion Before I Call For A Vote? Ok, Then, Do I Have A Motion To Move This Item To Public Hearing.

Or Some Other Motion? Chairman Judah: Motion To Defer Until We Get A Follow-Up Response From Legal With Regards As To Whether This Is Considered An Unfunded Mandate, Not Approved By Two Of 4 Thirds Of The Legislature.

Comm. Hall: A Motion By Commissioner Judah.

A Second By Commissioner Bigelow.

All Those In Favor? The Motion Carries Unanimously.

And My Item Is 8-A.

Since We Had Someone Speak, I Would Like Or The You To Share With The Board And Public The Process We've Gone Through To Have You Recommend What You're Recommending Today For Woodford Pass.

Yes, Natural Resources For The Record.

What You Heard Mr. Amos Outline Very Well Is In Fact Our Unsuccessful Argument As We Tried To Negotiate Our Way Through A State Permitting Process That Took Several Years To Complete.

In My Estimation, Especially When Dealing With Sea Grass, The Rule We Was To Deal With Are Very Subjective.

Clearly There Was Sea Grass Within The Footprint Of The Project.

Everyone Agreed That It Was Still A Good Project To Go Forward, But That The Rules Required Mitigation And Additionally Because We Were Inside Of An Aquatic Preserve Public Interest Test Had To Be Met.

We Tried To Argue First That The Project Itself Was Self-Mitigating.

We Were Doing So Much Good By Reopening This Pass, That We Would Offset Any Incidental Damage That Occurred During The Dredging.

We Were Told That Was Not The Way The Rules Were Written Be That Didn't Count.

So Then We Tried To Argue The Mathematical Way To Minimize The Amount Of Sea Grass That We Counted Essentially Art Officially Saying If We Pushed It All Into One Spot, That's The 1600 Square Foot That He Talked About.

That's Also Not The Way The Rules Read.

So, Consequently We Were Left With D.E.P. Telling Us In Order To Accomplish What Was Required By Rule For Them To Issue Us A Permit That We Would In Fact Need To Mitigate For The Sea Grass Damage, And Provide Public Interest And We Did That Through The Form Of The Wooded For Flat Management Area.

Last Time This Came Before You, I Think Everyone Agreed That The Pros Associated With Defining That Zone, Certainly Could Have Been Done With Better Public Involvement.

Nonetheless, It Is Associated With The Permit.

It's A Permit Condition Attached To Blind Pass.

The Zone, We Fortunate To Be Able To Partner With The National Wildlife Refuge For The Management Of That Area.

They Already Have A Similar Arrangement With The State Of Florida.

In Addition To Some Other Interior Refuge Lands That They Manage.

The Action Here Today Really Is Just The Last Administrative Step.

The Lease Already Grants All The Authorizations That Are Required, But The Refuge And The Refuge Manager Paul Is Here, Should You Have Any Questions Of Him.

They're Not A Party To That Lease.

So, In Order To Formalize Essentially And That Comes Out Of A Lease That They're Not A Party To.

We Have Developed This Management Agreement So That We Are All Officially Communicated Back And Forth, Who Is Going To Do What.

How It's Going To Work.

We Are Going To Have Periodic Reviews Of The Management Plan.

Such That We Can Make Any Changes At No Greater Than Five-Year Intervals As Necessary So We Can End Up With A Successful Outcome.

For The Resources First, But Also For The Users Because They're An Important Component As Well.

Comm. Hall: Thank You, Steve.

Any Questions For Steve Or Any Other Member? Then I'll Take A Motion.

Chairman Judah: I Would Like To Move The Item.

Comm. Hall: A Motion By Commissioner Judah.

Chairman Judah: I Want To Thank The Service.

I'm A Voter, And I'm A Fisherman.

If Ever There Was An Area In Need Of Protection Because Of The Significant Amount That Has Destroyed Grass Beds Is The Woodford Plats.

This Is Something That Should Have Been Done Anyway.

It's For The Health And Survivability Of The Marine Eco System That's So Dependent On Grass Beds.

This Is A No Poll Zone.

A No Motor Zone.

Given The Stress And Strain Placed On Our Ecosystem With Seemingly Endless Amount Of Fishing Tournaments Every Week.

The Numbers Of Bolters That Use Our Waters, This Is One Small Part And A Management Objective That Needs To Be Pursued In Order To Protect And Provide For A Sustainable Fisheries For The Future.

So To Further Support The Item.

Comm. Hall: Thank You, Further Discussion? All Those In Favor? Opposed? The Motion Carries Unanimously.

Thank You, Steve.

Next Go To The Administrative Agenda.

Item 8-A.

I Have A Motion By Commissioner Janes.

A Second By Commissioner Judah.

Further Discussion? All Those In Favor? Opposed? Motion Carries.

Item 14-A.

I Have A Motion By Commissioner Judah.

A Second? I'll Second For Discussion.

Further Discussion? All Those In Favor? Opposed? Motion Carries Unanimously.

Item 14-B.

I Have A Motion By Commissioner Judah.

I Have A Second By Commissioner Janes.

All That's In Favor? Opposed? Motion Carries Unanimously.

Next We Will Move On To The Appeals Agenda.

Good Morning, County Attorney's Office.

Commissioners This Morning For Your Appeals Agenda You Have An Appeals Matter Which Is An Appeal From An Administrative Determination For A Minimum Use Determination Under Your Comprehensive Plan Located On Boca Grande.

I Have Provided You With A Short Memo Yesterday For Your Procedures This Morning.

Suggested, I Think That Would Be Sufficient To Meet The Procedural And Due Process Rights That Are Afforded To The Appellant In This Matter.

And That Is The Argument For The Appeal Would Be Brought By Mr. Hartsell.

I Will Respond To The Argument Made By Mr. Hartsell.

Will Have 10 Minutes Each Roughly For That.

I Don't Think I'll Need That Amount Of Time, But I've Allotted That Amount Of Time.

And A Simple Rebuttal By The Appellant And A Rebuttal By The County Through Myself.

In That Memorandum That I've Provided To You Yesterday, I'm Excerpted That We Will Be Dealing With This Morning So You Don't Have To Go Through All The Materials In The Blue Sheet.

The Blue Sheet Does Consist Of The Full Appeal, It Also Contains Certain Appeals In Is Up Of The County's Position With Respect To Not Only The Determination, The Adverse Determination, The Denial Of The M.U.D., Minimum Use Determination For The One Lot And I'll Get Into More Detail In A Second And I'll Let Mr. Hartsell Come Up And Fill You In With His Perspective On The Matter.

The Issue Here Before You Deals With Really Not One But Two Minimum Use Determinations For Two Lots That They Own On Boca Grande.

The Principal Issue Here Is One That Deals With The Special Acts As It's Been Amended, Letting To The Means And Density Restrictions For Development On Boca Grande.

The Issues Principally Are Whether Or Not The Minimum Use Determination That Was Applied For One Lot May Be Denied By The County, And Secondly, Whether Or Not The Minimum Use Determination That Was Previously Granted In 2006 Should Be Rescind As The Result Of The Ownership Of Two Adjacent Lots Under The Same Ownership Under The Act.

This Is Just A Rough Outline Of What You're Going To Be Ruling On Today.

The Minimum Use Determination Is Found In Chapter 13 Of Your Lee Plan And It's An Administrative Methodology By Which The County Through Its County Manager And Through The Board Can Determine Whether Or Not An Application For The Development Or The Redevelopment Of A Single Family Home On A Lot Meets Certain Restriction Under The

Lee Plan.

In This Case It's Not Only The Restrictions Under The Lee Plan But There Is Restrictions Found In A Special Active Legislature Governing The Development On Boca Grande.

The Process Is Relatively Simple.

The County's Administrative Folks In This Case Was Pam, Has Reviewed All Of The Information Prepared By The Owners With Respect To Their Application For The Minimum Use Determination Has Reviewed That An Has Applied The Policies, The Procedures, And The Requirements That Are Found Within The Lee Plan But Also More Importantly Those Found Under The Special Act And Made A Determination That Particular.

In Conjunction With That I Also Provided A Millennium Of Law.

Through This Board.

Going Through The Examination Of The Facts And The Law.

Of The Minimum Use Determination And The Revocation, Which Is In Line With Determination That Was Made By The Speculation.

The Request However From The Appellants, From The Owners Is Really In The Form Of An Exception To What The Statute Says And To What Your Lee Plan Says Concerning Development On Boca Grande.

This Is Why This Is Before You Today.

Mr. Hartsell Will Come Up, Make His Presentation.

Following That, I'll Have Mine And Then We Will Entertain Any Questions You May Have.

With That If You Don't Have Any Question Before We Proceed, I Will Ask The Chair To Go Ahead And Bring Up Counsel Mr. Steve Hartsell To Make His Presentation And Then I'll Talk To You Again.

Comm. Hall: Thank You.

Mr. Hartsell.

We'll Give Each Speaker 10 Minute.

Commissioner Bigelow.

Comm. Bigelow: I Have Questions Of County Attorney If I Could, Steve.

Just One Quick.

You Refer To A Memo.

Was That Incorporated Into The Blue Sheet.

It Is Not, I Sent That Electronically Yesterday To All Of You And Says Appeals Agenda Regular Meeting Of November 17th, 2009.

Later You Referred To An Opinion Memo.

That Is In The Blue Sheet.

That Was Issued The Same Day As The Minimum Use Determination.

Comm. Bigelow: Ok.

And My Understanding That The State Legislative Act And The Local Ordinance Kind Of Blends With Etch A Other Or Does One Trump The Other? The State Statute Controls.

Comm. Bigelow: Right, So That's The One We Should Be Giving More Weight To Perhaps? That's Going To Be My Argument, Commissioner, Yes, Sir.

Comm. Bigelow: And How Long Ago Were These Lots Were They Split? Was This Two Lots That Previously Was One And When Was That Done? The Two Lots Were Two Individual Lots At One Point In Time One Of Them Had A Minimum Use On It, The Other Lot Has A Residence On It That Was Constructed In 1969 But They Were Two Separate Independent Lots, Owned By Different Individuals.

The Own Es Of The Property Bought Those Two Lots, Side By Side, At Different Points In Time From Different Owners, But Once Doing That, Fall Within Certain Requirements Of The Special Act That Deal With The Owning Of Two Contiguous Lots Of Density Determination Purposes.

Comm. Bigelow: Ok.

Can I -- If I Were To Conclude That If By Acquiring Them Individually, They Then I Guess Set Aside Some Rights That Those Property Owners Would Have Had If They Were Individual And Separate.

Rights Change When Those Two Lots Are Bought And Owned Under The Same Ownership, And Are Contiguous, Yes, Sir.

Comm. Bigelow: Appreciate It.

Comm. Hall: Any Questions Before Begin? We'll Start With Mr. Hartsell And You Have 10 Minutes And You Know Thousand Lights Work.

Thank You, Good Morning.

For The Report, Amount Here In Behalf Of Craig And Lynn Pogue.

I Think Commissioner Bigelow, You've Begun To Kind Of Hit The Nail Of The Head With Regard To What The Issues Are Here Today.

Despite That There Is A Huge Packet Of Materials That Are Attached And You've Got Memos From Other Attorneys And Memos From Your County Attorney And Memos From Me, I'm Not Going To Focus On All Of The Minutia Of The Details Of The Act.

What I'm Going To Try To Do Is Help You Focus On What's Essentially The Issue In The Case Here The Today.

This Is An Appeal Of The Denial Of A Minimum Use Determination, And Of The Supporting County Attorneys Interpretation.

It Has The Effect Of Denying The Pogue's The Right To Repair The Existing House Located At 740 East Railroad Avenue Or To Build A Home On The Adjacent Vacant Parcel.

The Vacant Parcel Was Approved For Minimum Use Determination A Little Bit Of The Background.

Boca Grande Was Plotted With Numerous Lots, All Over The Island.

Then In 1980, The Gasparilla Act Imposed A Five Unit Density, However, When The Gasparilla Act Recognized That There Should Be Exceptions To Protect People Who Legitimately Purchased Planted Lots That Were Existing Parcels In 1980.

The First Exception That Was Put Into The Act Itself Is The Right To Build A House On A Vacant Lot That Was Planted In A Subdivision Before 1980.

And The Second Exception Twist Right To Keep A House That Was Constructed On One Of The Planted Lots Before 1980.

That's In Section Four, Subsection Three And That's One Of The Sections That Mr. Owen Has Provided For You.

Why Were Those Exceptions Put Into The Act? They Were Put There To Protect People Who Owned Lots That Didn't Meet The New Density Requirements That Came Into Effect In 1980.

That's What Grandfathering Does.

It Protects People Who Legitimately Relied Upon The Law At The Time, Then Changed The Law Afterwards.

And It Protects People Who Already Had A House That Was Built On That Lot.

Here's What The Pogue's Circumstances Are.

They Were Hoping To Retire.

They Wanted To Build A Small Retirement Cottage.

The Neighborhood Consists Of Smaller Homes On Smaller Parcels.

They Found A Vacant Lot At 760 East Railroad Avenue.

They Decided To Buy The Lot.

But Before They Purchased That Lot, They Found Out That Next Door To It, Was Somebody Else Who Owned A House On A Lot.

They Decided They Could Downsize Their Circumstances, That They Could Sell The House They Were Living In.

They Could Purchase The House That Was Next Door To Where They Wanted To Build Their Cottage, Move Into That After Doing Some Minor Repairs And Remodeling And Watch Their Cottage Being Built While They Were Living In A House That Was Already Constructed.

After They Bought The House With Bank Financing Later, They Purchased The Vacant Lot Next Door.

The House That The Pogue's Bought Was Built In 1969.

It Qualifies As An Exception Under The First Exception I Mentioned Above.

I Also Mentioned That The Adjacent Vacant Lot Qualifies Under One Of Those Exceptions.

It Qualifies And In Addition To Qualifying Under The Act, As An Exception To The Density, It Also Had Its Minimum Use Determination.

That Was Issued In 2004.

So They Bought That Lot, They Saw That It Has Minimum Use Determination That Says, It's A Vacant Lot Substandard Under Boca Grande Standards But Lee County Says It's Consistent With The Lee Plan And Consistent With The Gasparilla Act.

Took Seven Months To Repair And Remodel Their House.

Then They Were Told For The First Time That On The House, In Addition To The Historic Board Approval, They Had To Get A Minimum Use Determination.

So They Applied To That Thinking No Big Deal.

Now, They're Toll For The First Time, That The County Attorney's Office Has Issued An Interpretation That Says That The Pagues Created A Group Of Substandard Lots.

Simply Because They Purchased The House, As Husband And Wife, And They Purchased The Vacant Lot With Minimum Use Determination As Husband And Wife.

I Submit To You That The Pogue's Never Created A Grouping Of Substandard Lots.

They Just Owned Two Parcels Both Of Which Qualify Exceptions To The Gasparilla Act And Both Of Which Qualify As Minimum Use Determinations Under The Lee Coin Standards.

The Act Never Says Or Implies That Mere Passive Ownership Of Contiguous Parcels Automatically Combines Those Parcels.

And In Order To Get To That Conclusion, You Have Got To You've Got To Strain And Stretch The Language Of The Act To Get There.

To Do A Combination, I Would Submit To You, Takes Some Intentional Action Of The Property Owners To Actually Intend To Combine Those Acts.

Not Simply Purchase To Otherwise Legitimately Separate Parcels.

Pogue's Never Intended To Ever Take Any Action To Combine The Parcels.

They Had No Way To Ever Anticipate That This New Interpretation Would Be Applied To Them And Cost Them Half A Million Dollars.

Now Remember, Both Of The Parcels Meet The Density Exceptions To The Gasparilla Act.

Each Was Owned By Separate With Different Addresses, Different Strap Numbers.

Each Was Purchased On Different Date, With Different Financing.

Even The Property Appraisers Office Will Not Combine Lots Just Because Of The Same Person Purchased Them And They're Contiguous.

You Have To Take An Active, You Have To Make An Active Application To Combine Those Lots Or Request That, Or You Have To Transfer Those Two Contiguous Parcels In One Deed.

Mere Ownership Does Not Serve To Combine Them.

The County Attorney's Interpretation State That It Is Result Of The Ownership Of The Two Contiguous Is That The Act Then Dictates That They're Only Entitled To One Residence And Submit To That You That That's Not A Correct Statement.

Does Not They The Result Of Ownership But In Subsection Four Which He Provided To You, In Section Four, Subsection Five States That If A Transfer Of Ownership Of Two Or More Of Said Substandard Lots That Are Contiguous Occurs, Then The Density Limits Apply.

A Transfer, This Clearly Calls For One Intentional Transfer Of All Of The Contiguous Parcel Into A New Parcel Before The New Density Limits Would Apply.

Now That Transfer In One Deed, That Would Show An Intention To Give Up The Grandfathering Protection By Combining The Lots Into One Deed.

If The Pogues Had Been Deeded, Both Of Those Parcels Together You Asked Were They Ever Part Of The Same Parcel? The Answer Is, No.

Not After 1980.

They've Been Deeded Both Of Those Together, And Then Later Had Tried To Split Them Out, I Would Agree With The County Attorney.

Or If Subsequently The Pogue's Had Transferred Both Parcels Into One Deed And Later Tried To Use Them Separately I Would Agree With The County Attorney, But The Act Doesn't Say Mere Passive Ownership Of Contiguous Parcels, Certainly If The Act Had Intended That, It Would Clearly Have Stated Exactly That.

That He Why The Original Drafter Of The Act Former Gicia Attorney, And Former Gicia Director, Sherman Both Wrote Letters Which Are In The Record, Strongly Disagreeing With The County Attorney's New Interpretation.

These Are Not Guys Who Are Looking To Increase Density On Boca Grande.

But They Both Strongly Agree Or Disagree With The New County Attorney's Interpretation.

They Knew It Was Based On The New Interpretation Which Hasn't Been Applied That Way In Years.

The County Attorney's Letter Is The First Where Explanation Of This New Interpretation.

So They Were Completely Unaware Of This When They Purchased Those Parcels.

In Conclusion, The Purchase Two Individual Parcels, Each Qualifies For An Exception To The Density Limits To The Act And Each Meets The Environments For The M.U.D. Under The Lee Plan.

Those Specific Exceptions Were To Protect Owners From The New Density Limits.

The M.U.D. Is Lee County's Minimum Protection For Some Property Owners' Rights.

These Two Parcels Each Meet All The Lee Plan Requirements For A Minimum Use Determination.

The Vacant Lot, Already Has An Existing M.U.D. On It.

That Says It Can Be Built With A Single Family Home.

That's Why The Pogue's Bought It.

The Other Lot Has An Existing House.

County Attorney's Interpretation Now Overrules The Lee Plan Minimum Use Standards.

And In Doing So, It Overrules The Clear Grandfathering Exceptions Placed In The Act.

The Result Is That The Constitutional Protections Which Are Adopted In Your Lee Plan To Avoid Intermediations Which Would Be Arbitrary, Unreasonable And Would Deny All Economic Viable Use Of Those Parcels Are Being Ignored.

The County Attorney's Interpretation Says Two Separate Deeds Conveying Two Separate Parcels On Different Dates, Different Sellers, Different Addresses, Different Number Are All Now To Be Considered And Treated As A Transfer.

The Result Is One Of These Parcels Becomes Worthless.

Pogue's Urge The Board To Reject That Result And Continue To Follow The Interpretation In The Longstanding, The Contiguous Parcels Are Combined Into One Deed To One Owner.

Health Care Thank You, You Will Have A Chance To Rebut The After The County Attorney.

Comm. Bigelow: Can We Ask Questions.

Comm. Hall: That's Fine, Commissioner Bigelow.

Comm. Bigelow: Ok.

Steve, If Mr. Pogue Had Bought One And Mrs. Pogue Had Bought The Other And Owned Separately, Sounds To Me We Will Not Be Here.

Would You Agree With That.

That's Exactly The Case.

If Mr. Pogue Or If Mr. And Mrs. Pogue Had Purchased One Lot And She Had Purchased The Next One, We Would Be Talking About This Right Now.

And That's Exactly I Mean, That's Why This Is So Frustrating.

They Had Absolutely No Idea.

It Doesn't Protect, I Mean Anybody Else, If Sort Of Now That The War Is Out, So To Speak, Everybody Will Make Sure If You Own Contiguous Lots, Buy Them In Different Names.

But That's Not, You Will Say, That Is Not What The Act Specifies.

I Submit To You That Is An Absurd Result, Based On An Interpretation, That I Would Submit To You Is Incorrect.

That's Why We're Asking The Board To Grant The Appeal To Reach A Reasonable Result.

Comm. Hall: Questions For Steve Before We Bring The County Attorney Up, Commissioner Mann.

Comm. Mann: Are You Saying It Would Be A Simple Solution To Transfer The Ownership From Husband And Wife Today, To The Individuals And This Be Done With? I Would Say That Yes, That Would Be A Simple Solution.

Comm. Mann: But We're Here Instead.

The Reason We're Here Instead Is Because When I Suggested That Simple Solution, I Was Told, That, No, County Attorney's Interpretation Is That Simply By Virtue Of Their Ownership These Are Automatically Combined Tan Pogue's Can No Longer Do Anything About That.

For Instance, What Would Happen If This Vacant Lot That They're Being Told, They're Not Allowed To Build On Because There's An Existing House Now.

They Look At This And Say, Gosh, We've Got A Half Million Dollars Invested In Something That We Can't Do Anything With.

It's Financed At Some Point In Time, Doesn't Make Sense To Keep Paying.

The Remaining Mortgage, Let It Be Foreclosed.

We're Told If It's Foreclosed, That The People Who Sold It To Them, Still Don't Have Any Right To Build On A Lot That They Sold That Had A Minimum Use Determination That Said, It Qualifies For A Single Family Home, And It Qualifies Under The Gasparilla Act.

Again, That's Why I Believed That This Interpretation Leads To An Absurd Result And I Don't Believe That That's Ever What Was Intended.

Comm. Janes: We Seem To Be Going Over And Over And Over, Point After Point After Point An And I Don't Think We Need To Keep Doing That.

Comm. Hall: Ok.

We'll Go Ahead And Have The County Attorney Come Up And 10 Minutes In There.

Thank You Madam Chair.

Good Morning Again, Commissioners.

Obviously I Respectfully Disagree Where Mr. Hartsell Is.

Coming On This.

This Is A Case Of Very Strict Statutory Construction.

And I'm Going To Give You Four Things That I Think Are Important For You To Determine Here This Morning, With Respect To This Appeal.

And With Respect To The Issue That's Before You.

As Steve Said, There's A Number Of Issues Involved With This.

It's Complicated.

There Are Matters That Had Been Raised Previously.

That Have Been Available To Others, With Respect To This Determination.

He Keeps Referring To The New County Attorney's Position, It's Not New With Reason To The Position.

What Is New Is I Do Admit That This Is The First Time That My Office Has Reduced To Writing A Full Memorandum Of Law With Reason To The Interpretation Of The Special Act Governing The Housing And Boca Grande With Respect To Density.

What I Will Like To Give You Is Some Guidelines Here For This Morning's Decision.

First And Most Important, Is The Special Controls.

State Law.

Special Acted Legislature.

What It Says, It Says We Have To Follow It, We're Bound By It.

Fallout After Effects, Those Types Of Things, Issues That Can Be Addressed Elsewhere.

Other Than Your County Staff, Your Administrative Staff And My Office.

I'm Of The Opinion That The Pogue's Property Constitute A Grouping Under Section Four, Subparagraph Five And I'm Satisfied That Controls With Respect To The Homes That Were Purchased And The Position They Are In Now.

The Statute Is Very Clear.

Per The Density Regulations, In Section Four, There Is Only One House Allowed Per Substandard Lot, Or Groupings Up To One Week.

That Is If You Have One Substandard Lot, You Get One House.

If You Have Two Grouped Substandard Lots, You Can Have One House.

If You Have Three Substandard Lots, You Can Have One House.

And Up To Four Depend On Where You See In This Case, One Of The Lots Is Part Of One Lot And Half Of Another Lot But Still Substandard By The Density Calculations, Up To At Least Four Lots You Could Own Conceivably You Still Only Get One House.

The Important Piece In All Of This From My Perspective Is That The State Law Is Being Interpreted By Mr. Hartsell And I, And I Would Suggest To You At A Because The State Law Says Specifically That When It Comes To Issues That Are Listed, And I Can Walk You Through Those, Which Includes Density Or Any Other Provisions Of The Act, May Not Be Interpreted Or Acted Upon By A Local Government.

And That's Section 4, Subparagraph 7 And I'll Walk You Through That In A Minute.

Also, With Reason To That Particular Issue, Any Individual Property Owner Has The Right To Challenge Your Action, If An Action Is Taken By This Board.

So There's A Potential For Litigation Lying Out There.

The Materials That I've Provided To You, There Was A Letter From The Now Sitting General Counsel To The Gicia To Lee County Back In 2006, Asking For A Correction To A Similar Situation Where A Minimum Use Determination Was Granted, And It Was Asked It Be Rescinded, Which It Was.

And Involved Adjoining Lots, So There's Precedence Here.

The Newness That Mr. Hartsell Is Talking About Are The Particular Facts And Circumstances With Respect To His Client.

And I Respect That.

That's What He's Doing Is Reasoning Representing Their Interests.

I'm Here Representing You, Your Interests, And Your Ability To Make Any Decisions Today.

With Respect To This Particular Matter And This Particular Appeal.

Mr. Hartsell That There Are Exceptions To The Application Of The Density And Gave The Two Out Of Section Four, Subparagraph Three, If There's A Hole On It, You Get To Keep It.

I Agree With That.

If There's No Home On Your Substandard Lot, You Can Build A Home.

I Agree With That Also.

But You Have To Go One Step Further In The Analysis.

And The Analysis Is Whether Or Not Those Are Free-Standing, Substandard Lots, In This Case It Is Not.

It Is Now Two Lots That Constitute A Grouping.

Mr. Hartsell Argues You Have To Do Something To Make A Grouping.

I Argue That You Do Not.

A Grouping Is A Grouping.

If You Take Two Things Side By Side As It Says In The Law And You Own Them Under The Same Ownership, They Are A Group.

And That's What Was Contemplated.

The Whole Purpose Of This Special Act Is To Regulate And Limit Density On Boca Grande.

If You Are To Effect That Objective, That Purpose, That Special Act, It Is Easy To See That The Regulations And The Worse In The Special Act And The Amendments Makes Sense.

In This Particular Case, We Do Have An Instance Where There Are Arguments Being Made That There's A Situation That Is Causing An Economic Harm To Individuals, That's An Argument In Equity.

And That's Better To Be Heard In Another Forum.

Not Before This Board.

Mr. Hartsell Argued That Just By The Purchase Of The Two Lots, The Two Adjoining Lots, Does Not Combine Them.

And Again I Disagree.

I Think That The Law Speaks For Itself, It Is Very Clear.

If You Own Two Adjacent Side By Side Lots Under The Same Ownership That Constitutes A Grouping And Regulation Fall Into Place.

That Happens With Respect To Both The Lots, Or The One Lot The Question Is Whether Or Not You Can Continue To Have The House If You're Going To Build A Second House On The Other Lot.

You Only Get One Home.

With Respect To The Vacant Lot, Can You Build A New Home On The Vacant Lot? If You Have A Free Standing Home On That Next Door Lot That You Bought? The Answer Is No.

You May Have One Home, On The Two Combined Lots On All The Other Circumstances With Respect To The Purchases And Sale, Again, Commissioners And From My Position And Standpoint, Those Are Arguments In Equity.

Those Are Not Before You Today.

What's Before You Today Is The Interpretation Of The Law Applied To The Facts By Your

Administrative Staff And By Myself And My Office.

We Have Reached What I Believe Is The Correct Conclusion With Respect To The Denial Of The Men Mum Use Determination That Was Applied For In The 2006.

With That I'll Stop.

If You Have Any Questions, I'll Answer Them, I'll Entertain Them.

If Not, Then Mr. Hartsell Can Be Called Up For His Rebuttal And I Would Like To Close.

Comm. Hall: We Have A Five Minute Closing Remarks.

So If Mr. Hartsell Would Like To Do A Five Minute Closing Or Rebuttal, Please, Come Forward.

Thank You Very Much.

I Don't Know If You Have The -- Well, Take Too Long.

Section Four, Is That Section Of The Code Of The Act That Mr. Owen Says Is So Clear.

I Submit To You That When You Read That, You Will Find That It Does Not Indicate The Simple Ownership Of Two Parcels Next To Each Other Serves To Combine Them.

That Is An Interpretation That Is Being Urged.

It Is A Change That Has Not Been Documented Until September Of 2009, At My Urging.

Now, There Was No Way For The Pogues To Know That That's What Was Going To Happen.

When They Purchased Two Parcels That Were Clear Lively, They Could Both Be Used For What They Were Intended.

A Single-Family Home.

I Would Urge That If That's An Interpretation This Board Chooses To Follow, That You Should Not Choose To Impose That On The Pogues, Who Had No Idea That Would Be The Interpretation.

But Only To Apply It In The Future.

County Attorneys Suggest That It Was The Pogue's Duty To Conduct Due Diligence And They Apply It's The Pogue's Fault For Not Catching This.

They Did Do Their Due Diligence.

They Found A Lot That Had An Existing House.

It Was Permitted To Have An Existing House.

They Found A Lot That Had A Minimum Use Determination, It Was Issued By The County.

And Condition Just Say Minimum Use Under The Lee Plan, It Said Its Consistent With The Gasparilla Act.

I Don't Know How Anybody Would Have Any Other Idea But To Believe That Yes, These Two Things Are, They're Permissible.

These Aren't Two People Trying To Full A Fast One On Lee County.

They're Not Saying Gosh, We've Got These Lots And Now We're Trying To Break Up Two Or Three Substandard Lots And Get A Bunch Of Individuals.

They're Separate Parcels, They've Never Been Combined.

Attached To The Appeal Are The Two Letters I Mentioned.

They Clearly Disagree With This Interpretation, But Reports Of The Details, If Those Two Folks, Who Are Incredibly Familiar, One Of Them Wrote This.

If They Believe That This Interpretation Is Incorrect, How Would The Pogues Otherwise Know That That Was Going To Be Applied To Them? Even Now, I Would Respectfully Disagree, The Record Does Not Show That This Has Been Applied Any Place Else.

That's Not Part Of The Record.

County Attorney Says The Goal Would Be To Reduce Density On Boca Grande? Is That Going To Happen Now? No, It's Not.

As Commissioner Bigelow Pointed Out, Everybody Else Will Simply Use Two Names To Purchase This.

Once People Realise It.

The Only People Who Will Going To Be Affected Here Are The Pogues Who Will Be Penalized After The Fact.

As I Mentioned, The Result Is Confiscatory.

It Deprives The Pogues Of The Value Of One Of These Lots.

That's Contrary To Your Interpretations, And I Quote To You From Your Lee Plan Section 13, Administrative Interpretations Of The Lee Plan Will Be Determined Under The Following Standards.

Interpretations Which Would Be Confiscatory, Arbitrary, Unreasonable Will Be Avoided.

County Attorneys Interpretation And The Way It's Applied Results In The Confiscatory Determination And Denies The Pogues All Use Of Their Property.

As You Will Notice, As David Has Pointed Out, They're Asking You To Revoke The Existing Minimum Use Determination On The House That's Next Door.

The Basically They're Saying Take Away The Minimum Use That We've Already Recognized On That Parcel.

Going To Ask, Does This Feel Right To You? Many Any Economy, Especially This, It's An Unfair And Unreasonable Result.

This Interpretation Is Your Interpretation, Despite What The County Attorney Says To You, That's Something That Should Be Done In Equity Or Suggests That Maybe The Gicia Mai File Site Or Maybe Somebody In Boca Grande Will File Suit Because They Disagree With This? That's Speculative.

The Pogues Right Now, Your County Attorney Is Asking You To Make A Decision That Effectively Costs The Pogues A Half Million Dollars.

I Can't Believe That You Believe That Is Right.

I Urge You To Grant The Appeal.

Allow The Existing House To Be Repaired And Allow The Existing Vacant Lot With The Minimum Use Determination, Not To Be Revoked.

Let Them Build On What They've Purchased.

Comm. Hall: Thank You.

Thanks Very Much.

Comm. Hall: David, Five Minutes To Closing Arguments And We'll Open It Back To The Board.

Just Going To Touch On The Jurisdictional Issue.

Second Amendment The Gasparilla Act 1986.

Section 4, Restrictions And Density Height Land Uses And Advertisement, Subsection Paragraph 7.

It's In The Handout That I Gave You.

No Local Governmental Body Or Agency Shall Have The Authority To Grant Exceptions To The Height, Density Or Sign Requirements Or To Any Other Provisions Or Rumors Of This Act.

This Isn't A Feel-Good Argument.

This Is An Interpretation Of A State Law.

And My Advice To You And Recommendation To You Is To Continue To Uphold The Decisions That Were Made By Administrative Staff In My Office.

If There Are Argument To Be Made With Reason To These Beyond These Chambers, Pogues Had The Opportunity To Do That.

I Would Suggest To You The Appropriate Place To Hear The Arguments That Mr. Hartsell The Bring Forward.

I Would Again Like To Recommend This Morning Given The Jurisdictional Issue Alone, Support The Denial Of The M.U.D. To Remain Consistent With The Gasparilla Act, And With That I'll Close.

Comm. Hall: Thank You.

Ok, We Have A Decision Here To Make, Do We Have Questions From The Board Or Comments? Comm. Bigelow: Yes.

Thank You.

David, Would You Agree With Mr. Hartsell's Answer To My Question That If The Pogues Had Bought This Individually And Separately That We Wouldn't Be Here.

If They Had Bought Those Two Properties In Separate Names, Yes, I Do.

I Would Agree With That.

There's A Lot Of This That Mr. Hartsell And I Agree On, But There Are Parts Where We Disagree.

It's Very Important Is One, The Interpretation Of Section 5 And Secondly The One I Just Mentioned To You Under Section 7.

Comm. Bigelow: And Mr. Hartsell Described The Circumstances Leading Up To This Unfortunate Situation They Find Themselves In, As I Understand It, They Bought A Vacant Lot For The Purposes Of Building On It.

Lo And Behold There's A Home Next To It.

Let's Buy That One While We Build That One.

If They Had Bought Across The Street, If They Had Bought The Vacant Lot And Bought Somewhere Else In The Neighborhood So They Could Fulfill Their Intention Which Is To Live Close To The New Home's Construction, Then We Would Be Here Right? We Will Not Be Here, No, Sir.

Comm. Bigelow: Ok.

It's The Contiguous Properties That Bring The Whole Issue To The Forefront 37 Any Time You Have A Single Substandard Lots, That Substandard Lot Is Entitled To One Residential Unit.

That's Your Minimum Use Determination.

Comm. Bigelow: Sounds To Me As If The Sin That Was Committed Is The Fact That They Were Married And Secondly The Fact That They Coincidentally Bought The Home Next Door For The Purposes Of Living And Watching Home Being Constructed.

I Wouldn't Classify Those As Sins.

I Think The Fact.

Comm. Bigelow: Their Error In This.

If Fact And The Error That Was Made Was That Both Husband And Wife Purchased The Two Lots Contiguous Is That Are Substandard Which Are Then Because They Are Contiguous Are One Residential Dwelling.

Comm. Bigelow: Thank You, That's All I Have.

Comm. Hall: Other Questions.

David I Have A Question Because I'm Reading From Paragraph 5, Says One Single Family Develop Dwelling May Be Constructed Or Grouping Of Such Lots Under One Ownership, Part Of A Subdivision Officially Record Prior To The Effective Date.

Yes.

Comm. Hall: It Sounds To Me Again It's Talking About Where Your Group Them And Officially Plan To Record Them As A Grouping.

That's Not Correct.

The Reason Why It Continues And Says Which Lot Or Lots Are A Part Of A Subdivision Which Was Planned Is Because Of That 1925 Planning Of A Lot Of Boca Grande.

And A Half, Most Of It.

And What The Legislature Was Doing There Saying If You Have One Of Those Substandard Lots Which Are About 50 By 110 Or Something Like That, That Were In Existence Prior To This Special Act, Then, When You Have One Of Those Substandard Lots, You Do Get One Unit, Even Though The Limitation Is Five Per Acre.

So What That Does Under The State Law Is Actually Gives An Opportunity For Someone To

Buy A Substandard Lot, Under The Rule.

In The Statute Which Is Five Per Acre To Have A Residence On That One Lot.

But If You Put Two Of Those Together And In Order To Meet That Five Units Per Acre Requirement, Then You Still Only Get One House.

If You Put Three Of Those Substandard Lots Together, Part Of That, You Still Only Get One House.

Comm. Bigelow: I Have A Question.

David, Where Is The Evidence, That Says They Intended To Group Two Lots.

Assemble With The Lots.

My Argument Is This, There's No Evidence.

The Law Says What It Says.

And One Single Family Dwelling, Upon Either A Single Substandard Lot Or A Grouping Of Such Lots Under One Up.

But, Under One Ownership.

The Statute Doesn't Address It Either Way.

Done Say You Have To Do Anything.

You Don't Have To Do Anything.

As A Result Of That, That's A Big Part Of Why We're Here This Morning.

Mr. Hartsell Is Saying You Have To Do Something To Cons Tuesday It As A Grouping.

I Disagreeing I Think The Law Is Very Clear On This.

And I Think The Authors Who Authored This.

And Who Knows What Legislative Machinations Went Through These Bills, As They Went Through The Process Were Intending To Do That In Order To Effect The General Purpose Of The Act, Which Is The Control And Keep Reduced The Density On Boca Grande.

Comm. Hall: Ok.

I Think We've Heard Very Clearly The Issue.

Looking For A Motion.

Chairman Judah: Madam Chair? I Don't Want To Be A Place In Position Of Undermine The Gasparilla Act.

By Interpretation Of The Act, And Also The Testimony And The Oral Presentation Of The Written Record And The Oral Testimony We Heard Today, I Will Make A Motion To Deny Appeal Denying M.U.D.

I Have A Second By Commissioner Jane.

Further Discussion? Commissioner Mann.

Comm. Mann: So If I Understand The Motion, You're Recommending We Take Mr. Owen's Position.

Yes, Sir.

Comm. Mann: Let Me Share These Comments I Think I Can Count To Three Too, But In Fairness I Feel Compelled To Share A Little History That I'm Acquainted With On This Matter.

Gasparilla Island Is Separated Into Two Counts.

Part Of It Northern Part Is Charlotte.

Southern Part Is Lee County.

The Citizens Up There Are Under The Leadership Of What We Used To Referred To As Gikea For Years Tried To Bring About Some Restrictions As To The Growth Up There.

And Have Some Type Of Growth Management.

Same Kind Of Things We've Talked About Here The Entire State Has Talked About Over The Years And They Came Together Back In 1980.

And Approached The Delegation An Asked Sense We Cup Get Lee County To Impose Standards For The Entire Island Because Part Of The Island Was Charlotte.

Then The Only Was The Legislature To Try To Make Some Sense And Bring Common Sense And Management At A Very Sensitive Little I'll That Is Clearly Limbed In How Much Traffic They Could Handle.

How Much Sewage They Can Handle.

How Much Fresh They Have Available And How Much Tourism.

It's Just A Little Vulnerable Little Island.

So Legislature Were The Only Ones That Can Deal With That.

The Suggested Act That Was Drafted Largely By With The Support Of The Gasparilla Island Speaking For Majority Of The People Of The Island At The Time, Came Up With This Act.

But They Knew At The Time, As Controversial As It Was Because It Required Growth Management Restrictions That Had Never Existed Before Up There.

By They Did.

Controversial As It Was, Because It Was Very Strict In Its Growth Limitations.

There Were Still Exceptions Made That Had To Be Made, So Not Just The Constitutional Test Of Property Ownership, And What You Can Do With It And What You Couldn't But The Fairness Test To Deal With Just These Kinds Of Issues.

And I Know For An Absolutely Fact, And It's Interesting To See Sherman's Letter.

Sherman Was Expect Thai Director Of Gasparilla Island For Many, Many Year.

Ray You Knew Him Or Know Him.

I Mean He's A Fine Man.

When He Whopped These Strong Growth Management Controls, Writes This Letter And Mr. Basel Who Wrote The Act Writes This Letter, Fairness Mandates That We Listen To Their Opinion, And I Just Throw In Another Useless Opinion, Probably.

A The House Sponsor Of The Bill That Created This Act.

I Don't Know If You Knew That.

Senator Warren Henderson Was A Senate Sponsor.

I Know This Was The Intention And It Was Not Meant To Tie The Hands Of Honest Citizens Out There Who Get Tripped Up In Some Little Technicality.

So, I Just Disagree Strongly, With Your Position.

I Think Mr. Hartsell Has Clearly Outlined The Intent Which I Am Familiar So I Needed To Share These Thoughts.

Thank You Vice President.

I Can't Support The Motion.

Comm. Hall: I Just Have One Comment And I'm Glad To Know That Commissioner Mann, But I Support The Applicant.

I Don't See In This Interpretation David I'm Not Reading You, And This Goes Back To My Concern That When We Mean Something, Let's Write It Down And Let's Write It Down.

I'm Not Comfortable That In Good Faith They Did Do What They Did.

They Have A Use There, And Took That As Being The Direction That They Could Go In.

And So I'm Uncomfortable Denying Them Their Appeal In The Sense I Think They Did Do Due Diligence And If I Were To Believe I Would Make The Same Interpretation.

I Certainly Support Less Intense Density, I Certainly Support Where This Is Going, But The Comments That Are Being Made By People Who Wrote The Intention Of This, It's Difficult For Me To Support Your Position And Your Comments To Us.

So I Throw That Out There And I Don't Know If Commissioner Janes Or Commissioner Or Judah Or Bigelow Want To Make Any Other Comments.

Chairman Judah: David.

That's Not Something I Don't Know We Really Have The Ability To Do.

It's Already Been Granted For That Lot As A Substandard Lot, Separate And Apart From Contiguous Ownership.

Actually Do Under A Comprehensive Plan.

Minimum Use Determination Is Made For A Specific Set Of Facts.

And If Those Facts Change Then The Application Of The M.U.D.

Can Change? This Particular Case Where You Had One Issued For A Single Free-Standing Lot Under A Single Ownership, Which Has Now Been Grouped With A Second One, Then One Or The Other Has To Go.

Those Two Combined Lots.

Those Group Lots, The Grouping I've Been Talking About Is Only Entitled To Have One Unit And There Has To Be One Or The Other.

And The Fact That The Up With Already Has A Home On It, Is Why The Other M.U.D. On The Other Lot Should Be Rescinded, Should Be Revoked.

Chairman Judah: Resulting In One Unit On The Two Lots.

Comm. Hall: Right.

Chairman Judah: That's Something We Need To Make Clear If This Motion Fails That We Do End Up Accepting The Revoking Or The Limit In Addition Of The Minimum Use Determination That Was Grabbed.

If The Board Supports Mr. Hartsell's Argument, Then The Pogues Will Have The M.U.D.

On The One Lot, Lot 8.

And Half Of Seven.

And The House On The Other Lot, Lot Nine.

Which, If You Read Section Four, Subparagraph Five, Strictly, Which I'm Doing.

I'm Strictly Construing That Statute, What It Say, Then They Will Have Roughly Twice The Density Allowed Under The State Law.

Chairman Judah: Yeah, If This Is Not Denied Today.

That's.

If The Board Is Persuaded By Mr. Hartsell's Arguments, And Denies Staff's Recommendations, Then You Would Have Pretty Close To Twice The Am Of Density On Those Lots At A Are Joined.

Chairman Judah: That's Why I Go Back, Can We Make Sure That The M.U.D. Is Indeed Resented? No, Sir.

Comm. Janes: We Can't, I Thought That Was The Initial Question Asked.

I Guess I Wasn't Clear.

I Thought He Indicated That His Client Would Be Willing To Rescind The M.U.D. Granted On One Of The Lots.

No, Sir, I Did Not Hear That.

I Do Not Believe That's Circumstance.

The Circumstance That Mr. Hartsell's Arguing, The Circumstance That He's Arguing For Is That Those Two Lots Are Separate.

They Are Not Grouped And Each Is Entitled To A Home So That Those Two Griped Lot Will Now Have Twice The Density That Is Allowed Under The Act.

To Me It's That Simple.

Chairman Judah: Let's Go Back Then To The Interpretation.

This Is A Grouping.

Unified Control.

It Does Double The Identity And That's Why I Made The Motion.

Comm. Hall: Is There Further Discussion? All Those In Favor? Opposed? The Motion Fails 3-2.

David, What Do We Need To Do Now? What The Plan Calls For Now Is There Needs To Be A Written Opinion Which I Will Prepare For You Which Will Be Issued By The Board Which Will Effectively Repeal And Rescind My Opinion, And The Staff's Opinion, The M.U.D. For Lot Seven Will Be Granted And They Will Continue To Own Their Home On Lot Nine.

Comm. Bigelow: We Don Immediate To Grant The Appeal.

I Guess The Correct Would Be To Grant The Appeal.

And Then I Will Prepare The Written Opinion Of The Board That Will Be Issued And Then That Will Become Part Of Your Comprehensive Plan Until Such Time As The Next Round Of Comprehensive Plan Amendments Come Around And Then That Will Have To Become Part Of The Comprehensive Plan Interpretation, I Guess.

Comm. Bigelow: I'll Make The Motion To Grant The Appeal, Madam Chair.

Comm. Hall: I Have A Motion By Commissioner Bigelow, Do I Have A Second, I Have A Second By Commissioner Mann, Any Discussion? The Motion Passes 3-2.

With Commissioner Judah And Janes Dissenting.

We Move On To The Walk-On Items.

Thank You For Your Decision, Commissioners.

I Have A Note Here That There Was No Motion To November Balance Of The Consent Agenda.

Comm. Hall: Sorry.

I Apologise.

A Motion By Commissioner Mann To Move The Balance Of The Consent General.

I Have A Second By Commissioner Bigelow.

Further Discussion? All That's In Favor? Opposed? Motion Carries Unanimously.

Walk-On Item Number Two.

Resolution To Create A New System.

Chairman Judah: Out Of Fairness To You, You Were Not Here Last Week When This Was Brought Forward.

We Have A Real Dilemma Right Now With The State Looking At Changing The Water Classification System When In Fact We've Been Relying On The Existing One To Try To Make The Necessary Upgrades And Fun Plans To Improve Water Quality And Receiving Water Bodies Throughout Lee County.

I Know That Natural Resources Indicated Some Concerns About The Need To Allow The Plan To Play Out, And To Delay Or Defer Any Further Action To Change The Classification System.

I Have A More Troubling Concern That The Proposal By The State V.P. Seems To Ignore The Fact That In Lee County We Have Some Over 80% Of Water Bodies And That's Probably The Percentage Throughout The State.

You Will Think To Trying To Address The Water Quality Problems Throughout Our Creeks, Streams, Rivers, And Estuaries.

And Strengthen The Effort Rather Than Trying To Dilute Or Weaken The Effort And It Appears That's The Direction They're Proceeding In.

More That Is The Categories That Are Based On Nonquantifiable Classifications.

Something That's Considered Fishable But Not Swimmable.

I Don't Know If You Would Want To Eat Fish Where You Can't Swim In That Same Water Body.

The Whole Premise Was Based On A Concrete Ditch I Think In The Pan Handle, That Somebody Complained Shouldn't Receive The Same Protection As Natural Water Bodies, And What I Would Ask Is That This Legislature Really Needs To Stake Stock With The Fact At A They Need To Institute New Merrick Standards.

You Can Talk To Any Water Quality And They Will Tell You Its Extremely Difficult To Find Ways To Ascertain The Condition An Hell Of Water Bodies If You Don't Have New Merrick.

Or Any Other Substance That Finds Its Way In Our Waterway.

And This Resolution Speaks To At Least Deferring Or Delaying Action On The Implementation Of This New Classification System.

I Will Rather Oppose It And Emphasize The Importance Of Adopting New Merrick Standards, But I Want To At Least Open This Up For The Board To Consider What Action You Want To Take To Let The Legislature Know That They're Not Doing Us Any Favors In Trying To Rectify With The Impaired Water Bodies In The State Of Florida.

Comm. Hall: I Appreciate That And I'm Very Familiar And Have Been Brief On The Issue, So While I Wasn't Hire, Last Week I'm Very Familiar With It.

And I Think What The Resolution Is Trying To Do Is A Place Holder That We Have Concerns, And We Have Scheduled For M.M.P. Updates On All Of Our Water Quality Issues, Not Just

This Issue And I Think That Again Waiting Two Weeks Until We Have A Full Presentation By Full Staff For Everyone's Edification Isn't Going To Change.

The Resolutions Are Place Holders.

The Effort Is Going To Be In Testifying Before Committee.

The Effort Is Going To Be Us Going And Doing What We Do, Which Is The Lobbying Effort That Will We'll Make On Behalf Of Whatever Direction This Board Decides And There Will Be Someone There Whether It's Staff Or Commissioner Communicating That On The Record I Don't Know If We Need Today To Change This Resolution Moving Forward.

But I Think There May Be Some Adjustments We Will Want To Make After The Management And Planning Meeting That We Want To Carry Forth Maybe On That Tuesday.

Only Because The Resolution Doesn't Go Far Snuff As Far As My Interpretation Of What's Being Said.

I Have No Problem Waiting Two Weeks Saskatchewan You Say, That's When It's Going To Be Reviewed, I Wanted The Send A Message Loud And Clear, This Doesn't Go Far Enough, But It Will Be Interested To See What The Board Decides After Hearing From Staff, If It's A Decision We Ultimately Want To Take.

Comm. Hall: I Don't Have A Problem For It.

Are You Suggesting We Don For Ward This Up With Wait Two Weeks Or Forward This One.

Chairman Judah: To Be Honest It's Not The Resolution I Had Hoped To Adopt Today.

Comm. Hall: A Motion To Refer It To The December 7th Board Meeting.

Chairman Judah: Which Will Follow The Many M.P., Yes, Ma'am.

Comm. Hall: I Have A Motion By Commissioner Judah.

Chairman Judah: I Will Second That We Fully Support That Because It Seems To Me That One Of The Major Responsibilities While We Sit On This Board Is To Make Certain That Our Water Is Clean, Fresh, Drinkable And Swimmable.

And To Adopt A Standard That Suggests It's Possible To Do Less, Is Just Unbelievable.

It Makes No Sense.

And We Have Terrible Problems With Less Than Good Water Around Here.

Commissioner Judah Is Right.

And I Think We Must Keep After The State, After The State Constantly To Ensure That There Are At Least Beginning To Meet The Standards That We Need To Have To Keep Our

Water Up To Date A List Of Numerical Standards Would Be A Great Help.

Comm. Hall: Thank You, Commissioner Jane.

For Me I Would Like To Have The Staff Be On One Page And I Would Like This Board To Be On One Page So We're All Moving Forward As Five And I Don't Disagree With The With Commissioner Just.

We Don't Need Any Comment Right Now Since We're Going To Defer This Item, And Then We Can Have All Of That Interaction On The 7th.

Is There Something Pending That You Just Have To Way? My Apologies, Madam Chair.

Tomorrow There Is A Workshop On This, And The Letter The Four Pages That We Have Attached Of Staff Concerns We Would Like To Understand We're Going To Forward Those Concerns, Participate That Meeting.

Chairman Judah: Thank You, Wayne, If We Could Separate That, You've Had A Chance To Look.

Comm. Hall: I Have No Problem With That.

Chairman Judah: Certainly We Will Defer On The Action With Regards To Our Position Formally To Be Submitted Until The Eighth.

But If We Can Submit The Concerns That Will Be In The Draft Position Paper By Natural Resource Staff.

The Motion Has Been Modified To Defer The Resolution Until December 8th But To Authorize Staff To Their Concerns That Are Attached To The Blue Sheet.

Does The Second Concur? Chairman Judah: Indeed.

Comm. Hall: Commissioner Bigelow.

Comm. Bigelow: Wayne.

I Notice We Have Other Municipalities Not Included Here.

If They Just Elected Not To Participate, Sanibel, Town Of Fort Meyer Beach.

This Is A Fast Moving Train And This Is In Response To A Decision That We're Making By The Storm Water Association And Many Of The Communes Don't Know And This Is Our Effort To Get More Into The Ball Game, So To Speak.

And Once That Is Granted, We Then Move On To Develop The Alliances.

Water Qualities Maybe We Can Let Them Know Meeting Is Going To Take Place.

Comm. Hall: All Those In Favor? Opposed? The Motion Carries Unanimously.

Walk-On Item Number Three.

Chairman Judah: Move The Item.

Comm. Hall: Motion By Commissioner Judah, Second By Commissioner Mann.

All Those In Favor? The Motion Carries Unanimously.

That Takes Care Of Our Walk-On Items.

Commissioner Bigelow.

Comm. Bigelow: I Just Want To Point Out That The Managing Climate Change Is Being On December 4th, 8:00 A.M. At The Airport Training And Conference Center, Mark Avila And Roy Beckwith Are Two Our Most Noble, Respected Sustainability Ambassadors And They Asked Me To Pass That On, So I Did.

That's All.

Comm. Hall: Commissioner Judah.

Chairman Judah: If We Could Just Have Our D.O.T. Staff Look At, Seen The News Letter Where Ray Lahood Unless A Dedicated Source Before January 2010 And I Don't Know How They Managed To Do That, Unless They Have A Special Session.

They Potentially Will Lose An Award \$2.5 Billion For Bullet Trains.

That's A Significant Hit If Florida Done Get Its Act Together.

Maybe If Appropriate Personnel Could Get Back To This Board By Next Tuesday To Send A Message To The Governor That They Need To Get On It, If They Expect To Get The Appropriate Funding For The Rail.

Comm. Hall: I Know That Our Representative Here Is Transportation Committee And I Know They've Had Committee Meetings Already Started, So Maybe Holly Can Work With D.O.T. To Make Sure Where That's At.

And Get Back To Us On Tuesday? I Don't Think We Need Medication For That, Just Consensus.

Commissioner Janes? Commissioner Mann.

Comm. Mann: Yes, Madam Chair.

Thank You.

Some Of You May Have Her Some Several People, And I'll Mention Their Names Because

Said Please Use My Name If It Helps, Regarding The Oak Tree Out Front.

Sam Galaway, Mrs. Davis, Spoken To Her Directly.

This Is Juroci, Whose Brother-In-Law Is A Former Clerk Of Court.

One Of The Largest Best Known Renounced Nursery Owners Around Here.

And Said Please While You're Looking Please Eck More The Possibly Of What It Would Cost, And What Technique Would Be Used For Strapping Up And Doing Redoing Perhaps In A More Modern Acceptable Fashion, Harnessing That Tree And See If We Can Get Another Half Century Out Of It.

I Took The Liberty Of Searching Out For Other Opinions, And I Got In Touch With A Lady In Sarasota Who Is A Professional Biologist, And She Specializes In Large Urban Trees And How They Can Survive.

She Stopped By And We Spent Part Of Wednesday Out There Looking At The Tree Taking Pictures.

She Went From Are The To A Meeting In Naples Where She Met With Her Association, State Group Which Was Meeting Down There.

And She Took A Bunch Of Pictures And Got Comments.

She's Getting Back To Me With Further Information.

I'm Going To Be Meeting Tomorrow With The Gentlemen Who Did The Resist-O-Graph, A New Machine.

He's Going To Explain To Me So I Want Him To Stand On That Better.

But What I'm Asking The Commissioner, I Would Like For Miss Schwartz Who Has Been Working On This To Find Out How To Chop It Down If We Can At Least Explore The Other Alternative.

What It Would Take To Reharness It And Save It, So We Will Have Good Information Of This Debate.

We're Protected Out There With The Fencing.

There's No Risk In Not Looking Carefully On This Debate.

So I'm Hoping That We Could Just Look At The Two Sides Of It As We Continue This.

It Would Be I Think Just A Tragedy For Us To Make A Hasty Decision With So Much History At Stake.

And So Much Am By Answer At Stake.

Madam Chairing I Don't Know To Rush Into Any Major Decision.

And This Is A Major Decision, But I Thought We Had Taken A Position Based On Sound Science, That Evidently There's Always Different Opinions And I'm Open To Listening To Other Opinions, But Karen, We Need To Hear From You Or Holly With Regards To The Arborist Who Rendered His Opinion, I Don't Know If That Arborist Has Spoken To Commissioner Mann.

Ok Then We Have Time Or The That Discussion To Take Place And I Suspect Administration Will Have A Chance To Brief Each Of The Board Members And The Feasibility Of Taking The Next Step Health Care It's Not Coming Down Before Next Deuce.

Ok, So We Can Touch Base On This Again On Tuesday.

Comm. Mann: And The Point Here Though Being In Discussing The Science, We're Only Looking At The Science Of Taking It Down.

And Hearing From That.

Chairman Judah: No, If The Science Shows It's Still A Healthy Tree That Can Be Salvageable We Need To Take The Steps You're Talking About.

Comm. Mann: See If We've Got Scientists, Experts Call Them What You Will To View Things Separately.

If We Can Be Doing Both I Think, It Would Be The Smart Thing To Do At This Time.

And Then When It Comes Down, Three Of Us Are Going To Make A Decision.

Hopefully Five.

I Very Well, I Was Officially Convinced.

I Was Preparing My Hear And Soul.

I Was Out There Collecting Acorn.

I've Planted 14 Already At My Home.

But Now Got To Thinking About It, And I Saw The Big Gash Where The Tree Fell Down From The Pipe.

I've Been Thinking, Gosh At Least, Another Couple Weeks It Might Take And A Response Back From The Lady.

And I Think I'm Hearing You Guys Are Ok With That.

Thank You Very Much, That's All.

Comm. Hall: And I Have Nothing.

We Move On To Committee Appointments.

Commissioner Bigelow.

Comm. Bigelow: Sorry, I Have To Make A I Have To Rescind An Appointment Of Don Gordon To The Bicycle Committee, I Think Commissioner Judah You Had Made That Appointment Previously.

So.

Comm. Hall: A Motion By Commissioner Bigelow To Rescind An Appointment.

Chairman Judah: He's Already On, Yeah.

All Those In Favor? Opposed? Comm. Bigelow: And I Have Four Reappointments To The N.D.C. And Michael Miller.

Comm. Hall: Is There A Second? Second By Commissioner Mann.

Motion Carries.

Commissioner Judah.

Chairman Judah: Hamilton.

Comm. Hall: A Motion By Commissioner Judah.

I'll Second.

Further Discussion? All Those The Favor? Opposed? The Motion Carries.

Commissioner Janes? Chairman Judah: I Would Like To Handle The Reappointment Of Robert Cruz, With The Construction Licensing Category.

Reappointment.

Comm. Hall: I Have A Motion By Commissioner Janes, Do I Have A Second.

I Have A Second By Commissioner Mann.

All In Favor? Opposed? Motion Carries.

Commissioner Mann.

Nigel: None, Thank You.

Comm. Hall: And A Motion To The Neighbour District.

I Have A Motion By Commissioner Jane, A Second By Commissioner Judah.

Further Discussion? All Those In Favor? Motion Opposed? Motion Carries.

County Manager? County Attorney? One Short One.

Mr. Peters.

Good Morning Commissioners.

Jack Peters.

Briefly I'm Asking For A Motion Authorizing Appeal In Lee County Case Number 09 Ca154.

You May Recall I've Spoken To All Of You In Chambers Regarding Saying This Is In Regards To The Second Case Filed By The Pleas.

I Will Make At A Motion.

Comm. Hall: I Have A Motion By Commissioner Mann, A Second By Commissioner Judah.

All In Favor? Opposed? Motion Carries Unanimously.

Any Other Item.

Nothing Else.

Comm. Hall: I Thank You For The You Want The To Serve You As Chair And We Are Adjourned.