

WORKSHOP AND PUBLIC HEARING

BOARD OF COUNTY COMMISSIONERS

NOVEMBER 21, 2005

A workshop and public hearing of the Board of County Commissioners were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Sara J. Devos and Commissioners Thomas G. Moore, Adam Cummings, Thomas C. D'Aprile and Matthew D. DeBoer. Also in attendance were County Administrator Bruce D. Loucks, County Attorney Janette S. Knowlton, Chief Deputy Board Services Tommy Q. White, and Minutes Supervisor Diane J. Nice. The workshop was called to order at **1:06 P.M.**

Chairman Devos opened the meeting, followed by the Pledge of Allegiance.

WORKSHOP

1. Lemon Bay League Initiative

Dr. William Coy stated the Lemon Bay League, Inc. (LBL), a not-for-profit corporation, is committed to building partnerships for a common Community Vision and coordinating existing and future planning efforts within the Lemon Bay Watershed Region including the Cape Haze Peninsula; the LBL is not just committed to managing the watershed but using the watershed as a general geographic region for coordinated planning efforts relating to natural, social, economic, and built systems; the LBL is not a governmental advisory committee or affiliated with any specific government agency; the LBL Board of Directors includes representatives from the West Charlotte County Civic Association, the Southwest County Alliance, South Venice Civic Association, Lemon Bay Conservancy, Englewood Area Planning Advisory Board, Englewood Community Hospital, Florida House Institute, Florida Gulf Coast University, and future organizational partnerships are being pursued with South Venice 2010, Old Englewood Village Association, Englewood Community Redevelopment Area (CRA) Advisory Board, and the Cape

Haze/Englewood Chamber of Commerce; and introduced Directors Tom Swepston, Misty Neighbors, Tom Minic, Bernice McGarry, Steve Suaw, Mike Price, Ann Merrill, Dr. Lucille Fullraith, and John Lambie. Steve Suaw, hydralogist with Kimley Horn, explained the primary goal is to develop congruency in multiple plans, jurisdictions, projects, and constituencies; a series of workshops were held with participants from numerous agencies and governmental entities including Sarasota and Charlotte Counties and Catherine Corbett with the Charlotte Harbor National Estuary Program (NEP) to develop the Lemon Bay Interagency Comprehensive Watershed Management Plan; outlined the watershed history retained by Moat Marine Laboratory on the Bass Biological Laboratory in Englewood from 1931 to 1941; the 13 Community Watershed Goals include restoring marine life, habitat, water quality, and rebalancing the hydrology; the Lemon Bay Watershed extends from Center Road in Sarasota County down into Rotonda and the Cape Haze Peninsula; the need to coordinate efforts across county lines for planning and creating a common understanding of the vision for the future; reviewed the natural, built, economic, and social layers; explained LBL is advocating a proactive post-disaster preparedness plan; a preliminary assets inventory was conducted for linkage and future protection; LBL is also advocating community and resource partnerships as listed in the slide presentation; reviewed Work Plan Elements for the next 12 to 18 months; outlined Tasks 1, 2, 4, 5, 6, and 8 that would require Charlotte County participation for funding and staff time; and summarized the planning process and estimated budget for the Initiative over the 12 to 18 month period based upon contributions of about \$72,000 from Charlotte County, \$197,000 from Sarasota County, \$204,000 from grants, and \$47,000 from in-kind services from LBL; and concluded the presentation with a quote from John Lambie in 1977 that "a community with clarity of purpose can have the future it desires." (Questions were posed and discussion ensued regarding mosquito control; the need to address water runoff, reuse, and restoration while ensuring flood control; irrigation and potable water resources; impacts on the water shed from septic systems; putting the issue to a referendum vote; establishing a private/public partnership to preserve and manage the water shed; LBL to bring back more details on funding and services from the County, potential grants on a 50/50 match, and foundation funding sources.) Dr. Coy thanked the Board for being receptive to LBL ideas.

PUBLIC HEARING

2. Babcock Ranch Update (Proof of Publication was in order)

Chairman Devos announced citizen input procedures. Paul Holmes, a Charlotte County resident, stated he sees no reason for the Board to sign the agreement today but there are numerous reasons not to; Lee County Commissioners postponed action for two weeks due to the insufficiency of information; suggested postponing action until Board Members have time to review the agreement received on November 18, 2005 and to receive staff input to make an informed decision in the best interest of residents instead of an out-of-town developer; there has been no actual information provided for public review; this public hearing was expedited based on the Governor's request; if the County does not sign the agreement today, it is very likely the Governor and Cabinet will not approve the purchase tomorrow; if the agreement is signed, the Board cannot go back, and one of the largest shopping malls in Florida and five golf communities will be built. Alissa Bierma, of the Conservancy of Southwest Florida, a group that has been working over 40 years to protect the environment of Southwest Florida, commented in support of the State's acquisition of as much of the Babcock Ranch as feasible but the support does not have to be tied to a decision on how to govern the rest of the process; the public and Board Members were given one weekend to review the 28-page legal agreement; this agreement is complex and will have far-reaching impacts on Charlotte and surrounding counties; and requested postponement of a vote and allow more public participation. John Boland, a Charlotte County resident and a member of Babcock Ranch Preservation, stated this is the first time that a developer has dictated terms and conditions of a land deal to a Charlotte County Board of County Commissioners; Mr. Kitson has set the time table and the County and State have fallen into line under the threat that if he does not develop the land, the next developer could be a lot worse; two days is unfair for the Board, staff, and citizens to review and analyze the agreement and questioned the legality of the process; challenged the Board and staff to provide an in-depth synopsis of the agreement today; requested the Board postpone action on the agreement just as Lee County Commissioners did; and commented in support of acquiring the land for a State or Federal Park. Barney

Mitchell, a Charlotte County resident since 1987, stated his primary concern is the short time that the Board, staff, and citizens have had to review, analyze, and understand the commitments that will be required of the County even before any impact review is done; referenced page 24, Attachment C, entitled Time Schedule, by November 2005, the parties are to finalize and execute the interlocal agreement and on December 14, 2005, this Board is to hold the transmittal hearing for the Comprehensive Plan Amendment for Area 6 and, if approved, transmit it to the Department of Community Affairs (DCA) followed by finalization of the Area 6 Comprehensive Plan in late March or early April 2006 prior to the July 2006 first Development of Regional Impact (DRI) sufficiency review; and stated the project should go through the DRI review process prior to implementation of a Rural Lands Stewardship Program. Carl Voth, a Lee County resident, commented in support of saving the Babcock Ranch in its entirety; no impact studies have been performed regarding wildlife or future growth management of the proposed development; and he has seen no statement from the Babcock Family last week as mentioned by Mr. Kitson. John Knight, from an eighth generation family in Lee and Charlotte County since 1845, stated none of the citizen input has mentioned the increase in jobs, educational opportunities, and economic growth in the area; and requested support for the project from the Board as it will help the County grow. Bruce Wallney, a 17-year resident on US 31 across from Babcock Ranch, commented on the mining operations, increased traffic on US 31, and growth in the area; US 31 should be four-laned even without this development; and stated the proposed development would bring new schools, jobs, and tax revenues for the County. Rae Ann Wessel stated the final draft of the agreement has only been available to the public since 4:00 pm last Friday; the first recital mentions that all statements are true and correct but there are several issues that new more thorough review and analysis by the public, staff, and the Board; the agreement provides additional density units from the State lands prior to the outcome of the Comprehensive Plan Amendment; the density increase would allow development of a city the size of Punta Gorda or North Miami Beach; Attachment B to the agreement lists only two of the six proposed development features; and encouraged the Board not to rush a decision on the agreement. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. Chairman Devos**

requested Janette S. Knowlton, County Attorney, to address public concerns. Attorney Knowlton opined the public notice is legally sufficient; reported various reiterations of the agreement have been available over the last two months; it was made available to the press as soon as it was received in the County Attorney's Office; explained staff from the County Attorney's Office, Bruce D. Loucks, County Administrator, and Michael Konefal, Community Development Director, have been involved in the negotiation process over the last two months comprised of weekly meetings with Mr. Kitson and his group and the Lee County Attorney and his staff; meetings were held daily during the last week; the staff review and reports are not a part of the decision to be made today; the staff reports are relevant to the Comprehensive Plan Amendment; there will be many more opportunities for public input during public charrettes and public hearings before this Board and the Planning and Zoning Board; and this is the beginning of a lengthy process. Attorney Knowlton summarized the Purchase and Sale Agreement between the State, Mr. Kitson, and Lee County and approved by Lee County last week and even though Charlotte County is not a party to the Purchase Agreement, paragraph 33 is relevant because it deals with water resources. Attorney Knowlton outlined provisions of the Interlocal Agreement (four-party agreement) between Mr. Kitson, DCA, Lee and Charlotte Counties; this agreement does not grant approvals to Mr. Kitson and it does not commit the Boards of County Commissions to grant any approvals to Mr. Kitson; there is no vesting of development rights; Attachment B list the development units but it is not binding on any of the parties; reviewed paragraph 2 on the purpose and process, paragraph 3 expressly states that no approvals are granted by this agreement, paragraph 18 indicates no vesting of development units, paragraphs 4 and 5 direct the process for public charrettes between December 2005 and March 2006 in both counties prior to submittal of the proposal by Mr. Kitson to Lee and Charlotte County Board of County Commissioners; each county would adopt the applicable plan provisions as a Comprehensive Plan Amendment; paragraphs 8 and 9 are relevant to the Comprehensive Plan Amendment that was filed on or about September 30, 2005; a submittal hearing is scheduled before this Board in December 2005; DCA has agreed to consider the Amendment on an expedited basis; and the intent is for Charlotte County staff to meet with DCA officials to facilitate the expedited review and address concerns. Attorney Knowlton

explained the "point of no return" is when the Comprehensive Plan Amendment is presented to the Board for adoption, probably in March 2006; the Agreement provides for a Rural Lands Stewardship Program or going through the DRI process; Mr. Kitson may agree to the DRI process and either Lee or Charlotte County may request the DRI process; paragraph 10(a) provides the assurance to Mr. Kitson of the density units and paragraphs 10(b) and (c) deal with defaults by trustees and development rights to Mr. Kitson on parcels not acquired by the State (these provisions are incentives for the State to complete the purchase); paragraph 12 is the "deal breakers provision" because if paragraph 33 in the Purchase and Sale on the water resources is not accepted as Charlotte County wishes, then there would be no deal; paragraph 21 refers to the infrastructure financing in that all of the capital necessary for construction of public infrastructure in Area 6 would be provided by Mr. Kitson or residents in Area 6 and it is Mr. Kitson's responsibility to mitigate any impacts in both counties outside of Area 6; and asked Cari Lynn Roth, of Bryant, Miller and Olive, P.A., to provide the latest update regarding paragraph 15 on the water provision. Attorney Roth advised the Cabinet was dissatisfied with the agreement negotiated by staff and presented to the Members, especially provisions allowing Mr. Kitson access to State lands to provide water to Charlotte County; they did recognize the Charlotte County's need for water and they would be willing to consider an application to provide access to the County on future State lands to withdraw water; the Purchase and Sale Agreement to be before the Cabinet tomorrow has provisions that the County may apply for up to 10 mgd of water and limits the withdrawal to the Florida Aquifer which is only one of the potential water resources; the Agreement recognizes Charlotte County's water needs; and staff has suggested language to remove those restrictions but Charlotte County would have to apply for and receive a consumptive use permit in advance of coming back to the trustees for permission for the easements to access State lands. **Chairman Devos** requested additional comments from the County Administrator. Bruce D. Loucks, County Administrator, opined the County Attorney summarized the agreement well; indicated staff involvement has been extensive to this point and numerous changes have been done; Lee County is scheduled to review this document on November 29, 2005; and this meeting was scheduled today since the next regular Board meeting is not until December 13, 2005. Mr. Loucks commented in support of the

protections for Charlotte County in different situations; DCA has committed to working with Charlotte County on the Comprehensive Plan Amendment transmittal as well as Mr. Kitson prior to approval of the adoption in the Spring by this Board. **Chairman Devos** requested clarification of the Rural Lands Stewardship Program versus DRI processes. Attorney Knowlton stated it seems more likely that Mr. Kitson will need to go through the DRI process based on the assumption that the State may acquire all of the land at one time. Attorney Roth explained the Rural Lands Stewardship Program and the DRI are not mutually exclusive; it would probably be beneficial if the State acquires all of the land at one time to move permitting forward outside of the Rural Lands Stewardship Program; and there is an including but not limited to list of unresolved issues in the four-party agreement on page 6, paragraph 4 concerning wildlife, natural resources, discouraging urban sprawl, provision of infrastructure, transportation facilities, public and institutional facilities, use of innovative planning techniques, intergovernmental coordination, use of innovative and efficient funding mechanisms for infrastructure concurrency requirements including special taxing districts, community development districts, workforce housing, hurricane protection and sheltering, energy conservation, schools, and financing of capital facilities inside and outside of the development area. **Chairman Devos** acknowledged the significant efforts expended by staff, the County Attorney's Office and Attorney Roth. **Commissioner Cummings** stated he is in the process of reviewing the current agreement; he learned two hours ago that the DRI process will more than likely be done in lieu of the Rural Lands Stewardship Program; this is now considered an Overlay Amendment and not an Interim Overlay Amendment for Area 6 and Charlotte County is giving control over Area 6 to parties to the Purchase and Sale Agreement, of which Charlotte County is not a signatory; there are things that can be requested in a Rural Land Stewardship Plan that cannot be asked for in a DRI and he had not envisioned that only a DRI would be done; he does not see any gain to Charlotte County from expediting action by tomorrow since Lee County will not be addressing the issue until next week; and requested action be delayed for at least one week. **Commissioner Moore** expressed respect for **Commissioner Cummings'** caution; recalled conversations regarding the hue and cry concerning the Rural Lands Stewardship Program bypassing the DRI process, now it is the reverse; Charlotte County has not

lost control, this is the beginning of the process; expressed concern about two words in the water terminology; this is not a commitment, it establishes a process; and it is a good document. **Commissioner DeBoer** commended staff on their efforts to segregate and isolate authorities and obligations and protections for Charlotte County; stated there is a distinct advantage to being the first party to approve a contract instead of the last party as was done with the Peace River Water Authority agreement; there is a great deal of leverage for Charlotte County to be able to show a commitment to move forward and to the process; Tallahassee does not want to appropriate all of the money and wait three years to approve something; Charlotte County's step forward could be viewed in Tallahassee as a positive step in assisting the State's efforts toward acquiring as much of Babcock Ranch as possible; and commented in support of moving ahead. **Chairman Devos** requested confirmation that the Rural Lands Stewardship Program is precluded. Attorney Knowlton stated, if the State purchases all of the land at one time, there may not be enough time to complete the Rural Lands Stewardship process. **Commissioner DeBoer** pointed out if a direct purchase of the entire 74,000 acres, there would not be a Rural Lands Stewardship, except for the balance of acreage that may be developed; he has spoken to staff about this previously since it was a possibility but it was not necessarily intended from the beginning to happen or was it a last minute ploy to try and avoid Rural Lands Stewardship. **Chairman Devos** questioned the need to make language changes if both Rural Lands Stewardship and the DRI process are to be done. Attorney Knowlton responded no, the agreement provides for such an option. **Commissioner Cummings** questioned if the agreement gives Charlotte County the option or control over whether it occurs. Attorney Knowlton referenced paragraph 9, that allows Mr. Kitson the option to choose a DRI but if Charlotte County requests a DRI, then a DRI on the Charlotte County portion must be done; and the Rural Lands Stewardship Program must be agreed to by both Charlotte County and Mr. Kitson. **Commissioner Cummings** indicated paragraph 10(a) stated "that should any governmental party to this agreement or to the State Purchase Contract not comply with the provisions of either of these agreements in a material and substantial manner, then the Charlotte Area 6 Amendment shall become the permanent overlay amendment for the area covered by the Charlotte Area 6 Amendment"; rationalized that if the overlay becomes permanent, there is no need for a

Rural Lands Stewardship Program; stated if development rights are already owned, the DRI process is a very bureaucratic one and it is designed to get approval. Attorney Roth expressed understanding that the overlay would dictate parameters and details would be controlled by the DRI. **Commissioner Cummings** reiterated different things may be asked for in the Rural Lands Stewardship Program than in the DRI; if the overlay is approved and it becomes the permanent overlay, nothing is gained by going through the Rural Lands Stewardship Program because they already have development rights. Attorney Roth stated a decision on the Rural Lands Stewardship Program would occur quickly based on the Legislature's funding of the purchase and the contents of the overlay amendment will be important to set the standard for what the County wants in this new community. **Commissioner D'Aprile** requested an explanation on the lands to which the Rural Lands Stewardship Program would be applicable e.g. the 74,000 acres or the land to be developed. **Commissioner Cummings** stated the Rural Lands Stewardship Program is more flexible than a DRI because there are no guidelines, just the statutory intent but he envisioned the Program being applicable over the entire area. Attorney Roth recalled the original idea for the Rural Lands Stewardship anticipated that the State owned parcel would be acquired in phases but it would cover the entire parcel and some of the sending areas for Rural Lands Stewardship would be on future State owned parcels; Area 6 in Charlotte County is still large enough to be a Rural Lands Stewardship area depending on the natural resources on the property. **Commissioner DeBoer** explained the Interlocal Agreement and the Purchase and Sale Agreement are tied together; the sale will not occur until the Comprehensive Plan Amendment and the Overlay are approved; the commitment today is only to the process; development rights will not be addressed until adoption of the Comprehensive Plan Amendment and the Overlay; and there is no need to delay action another week. **Commissioner Cummings** stated if there is no commitment, there is no need for a contract. **Chairman Devos** advised **Commissioner D'Aprile** will not be available next week and she and another Commissioner have conflicts for the following week so the first available date would be the next regular meeting; stated it is important for all Commissioners to be present for the vote; and requested a motion to move forward since there will be more opportunities for public input and review. **Commissioner Cummings** stated he is not comfortable with language in the interlocal agreement that "Whereas and Recital"

provisions are true and correct and referenced the contractions in paragraph 33 that states "This agreement will not be assigned by Kitson to its heirs, legal representatives, and successors in interest . . . without the express written approval by DCA and both Counties and such approval shall not be unreasonably withheld." **Commissioner Cummings** pointed out the final staff recommendation has not been received, he has not had sufficient time to review the documents, the proposal will completely reverse the entire Comprehensive Plan and the vision of the Board established over the last 10 years, and cautioned the Board on proceeding in haste on this standard high pressure, hard sale procedure. **Chairman Devos** pointed out paragraph 33 will be discussed in December. **COMMISSIONER DeBOER MOVED APPROVAL OF AGREEMENT #2005-053, SECONDED BY COMMISSIONER D'APRILE.** **Commissioner DeBoer** requested clarification on paragraph 33 from the County Attorney. Attorney Knowlton stated paragraph 33 in the Purchase Agreement is still a work in progress, suggested the following changes as amendments to the agreement: on page 11, paragraph 12(a) of the interlocal agreement to indicate "the Trustees, FFWC, Lee County, and Kitson do not execute the State Purchase Contract (with "Paragraph 33 Water Resources" in ~~the form as shown on Attachment F~~ hereto a form acceptable to the Charlotte County Board of County Commissioners); page 17, paragraph 39, to read "DCA is a party to this Agreement only with respect to provisions, 3, 6, 14, 18, 23 through 28 inclusive, 33 through 36 inclusive, 38, and 39; and page 22, Attachment C, Time Schedule, (7) and (9) insert "a complete submission of", as requested by DCA, to read (7) "45 days after receipt of a complete submission of Transmitted Amendments" and (9) "30 days after receipt of a complete submission of Adopted Amendments." **COMMISSIONER DeBOER AMENDED THE MOTION TO INCLUDE THE CHANGES AS READ INTO THE RECORD BY ATTORNEY KNOWLTON, ACCEPTED BY COMMISSIONER D'APRILE.** **Commissioner Cummings** questioned the change to paragraph 33. Attorney Knowlton advised paragraph 33 was not modified since it will be brought back for proposed changes depending on the outcome tomorrow's meeting. Attorney Knowlton interpreted the Counties and DCA shall not unreasonably withhold approval of any assignments by Kitson to another member corporation. **CALL ON THE MOTION AS AMENDED: CHAIRMAN DEVOS AND COMMISSIONERS DeBOER, D'APRILE AND MOORE VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO."** **MOTION CARRIED: (4:1).** **Chairman Devos** announced the Public Hearing on Babcock Ranch for the Comprehensive Plan

Amendment application is scheduled for Wednesday, December 14, 2005 at 9:00 A.M. **Chairman Devos** expressed appreciation to staff and **Commissioners DeBoer and Cummings** for all of their efforts concerning numerous issues related to Babcock Ranch. **Commissioner DeBoer** stated he would not be present for the Board Meeting tomorrow and expressed support for **Commissioner Moore** to serve as Chairman.

MEETING ADJOURNED: 3:00 P.M.

Signature on file in Commission Minutes
Sara J. Devos
Chairman

ATTEST:

**BARBARA T. SCOTT, CLERK
OF THE CIRCUIT COURT AND
EX-OFFICIO TO THE BOARD
OF COUNTY COMMISSIONERS**

By: Signature on file in Commission Minutes
Deputy Clerk

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