

BOARD OF COUNTY COMMISSIONERS

OCTOBER 23, 2007

A regular meeting of the Board of County Commissioner was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Loftus, Commissioner Duffy, Commissioner Cummings, Commissioner D'Aprile, and Commissioner Moore. Also in attendance were County Attorney Knowlton, County Administrator Loucks, Chief Deputy White, Executive Assistant Gant, and Deputy Clerk Manley. The following members were absent: None. (Proofs of Publication were in order.)

The meeting was called to order at **9:00 AM**.

The invocation was given by **Chairman Loftus** followed by the Pledge of Allegiance.

Changes to the Agenda:

Addition #1: Requested by Commission Office - Committee Vacancies - Rotonda West Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to complete a term as an alternate member. The term shall expire on February 27, 2009.

Addition # 2: Requested by Commission Office - Z-6 - Appoint current alternate member, Richard Buszka as a regular member to complete the term of Connie Volpe who resigned on October 8, 2007, on the Rotonda West Street and Drainage Advisory Committee. The term shall expire on February 13, 2008.

Deletion #1: Requested by Human Services - N-1- **RECOMMENDED ACTION:** a) Approve Resolution certifying that Charlotte County Habitat for Humanity, Inc.'s program is consistent with local plans and regulations including the Comprehensive Plan of Charlotte County; and b) Approve Loan Consolidation Agreement and Promissory Note to Habitat for Humanity, and c) Authorize Chair to sign, after review by the County Attorney's Office, both documents. **BUDGETED ACTION:** None.

COMMISSIONER D'APRILE MOVED TO APPROVE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER MOORE.
Motion Carried 5:0.

Special Recognition

Proclamations - Commissioner Cummings

COMMISSIONER MOORE MOVED TO APPROVE A PROCLAMATION FOR HOME HEALTH CARE MONTH FOR THE MONTH OF NOVEMBER 2007, SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

No one was present to accept the Proclamation.

COMMISSIONER MOORE MOVED TO APPROVE A PROCLAMATION FOR JAMES "JIM" STACY DAY OCTOBER 23, 2007, SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

The Proclamation was accepted on behalf of Jim Stacy by Jeff Pearson and Mrs. Stacy.

COMMISSIONER MOORE MOVED TO APPROVE A PROCLAMATION FOR MICHAEL "MIKE" KEHOE DAY OCTOBER 23, 2007, SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

The Proclamation was accepted by Mike Kehoe.

Employee Recognition - No Items

Award Presentations - No Items

I. CITIZEN INPUT - AGENDA ITEMS ONLY

Tim Verwiebe spoke in favor of agenda item S-5.

Mark Bender addressed agenda item X-1 on behalf of himself and other neighbors and spoke in favor of demolition of the subject property.

John Pollack commented on agenda item X-1; stated he loaned money to the former owner and had to take property back; that he has a contractor to work on the property; and requests the Board to consider an extension to allow time to do something economically with the property.

Andrew Pollack spoke on agenda item X-1 in favor of allowing John Pollack additional time to do something economically with the property.

Scott O'Connell spoke on agenda X-1; advised that he lives directly across the street from the subject property; stated Mr. Pollack is an investor and has had sufficient time to clear the property; and asked that demolition go forward immediately.

Linda Ringer spoke on agenda X-1; indicated that she lives next door to the subject property and requested that demolition go forward as planned.

II. COMMITTEE VACANCIES: Charlotte County is seeking volunteers to serve on the following Committees:

Affordable Housing Advisory Committee - is seeking one member as the Building Industry Representative; term ends March 2009.

Boca Grande Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to serve as the alternate member on the committee. The term is for two-years.

Deep Creek Non-Urban Street & Drainage Unit Advisory Committee - is seeking one volunteer to fill the remainder of a vacated term, effective immediately. This term will expire in January 2008.

Gardens of Gulf Cove Street and Drainage Advisory Committee - is seeking four regular members and one alternate member who own land and reside within the boundaries of the Unit. The terms for the regular members shall be pulled by lot numbers during the first scheduled meeting of the committee. The term for the alternate member is two-years.

Gulf Cove Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to serve a three-year term on the advisory committee.

Gulf Cove Waterway Advisory Committee - is seeking one volunteer who owns land and resides within the boundaries of the Unit to serve as an alternate member on the committee. The term will expire on July 25, 2008.

Historical Advisory Committee - is seeking one member to serve as member-at-large for a three year term.

Lemon Bay Street and Drainage Advisory Committee - is seeking one volunteer to serve as a regular member, and one volunteer to serve as an alternate member for a two-year term. The term for the regular member shall be pulled by lot number at the first scheduled meeting of the committee. Volunteers must be landowners and reside within the boundaries of the Unit.

Manasota Key Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to serve as an alternate member on the committee. The term is for two-years.

Manasota/Sandpiper Key Advisory Committee - is seeking one volunteer who owns land and resides within the boundaries of the Unit, and who will represent the commercial businesses within the Unit for a three-year term.

Rotonda West Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to complete a vacated term that will expire on February 13, 2008.

Town Estates Street & Drainage Unit Advisory Board - is seeking one volunteer. This is a three (3) year term effective immediately and it expires on January 23, 2010.

Rotonda West Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to complete a term as an alternate member. The term shall expire on February 27, 2009.

III. REPORTS RECEIVED AND FILED - No Items

IV. CONSENT AGENDA

COMMISSIONER MOORE MOVED TO APPROVE IV. CONSENT AGENDA EXCEPT AGENDA ITEM S-5, SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

Clerk of the Circuit Court

A. Finance Division

(1) RECOMMENDED ACTION: Approve Clerk's Finance Memoranda

Memorandum #1 - Status of Contingency Reserves - FY 06/07

Memorandum #1A - Status of Contingency Reserves - FY 07/08

Memorandum #2 - Total Disbursements for the Period October 1 through 15, 2007 in the amount of \$24,517,392.33 BUDGETED ACTION: None

B. Minutes Division

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|------|-------------|----------|---------------------|----------------|----------|
| (1) | RECOMMENDED | ACTION: | Approve | Minutes | for: |
| 9:00 | AM | 09/18/07 | Land Use | Public | Hearings |
| 9:00 | AM | 09/25/07 | BCC Regular Meeting | | |
| 5:01 | PM | 09/27/07 | Final Budget | Public Hearing | |

BUDGETED ACTION: None

Board of County Commissioners

C. Commission Office

(1) RECOMMENDED ACTION: Approve the reappointments to the Historical Advisory Committee: Mrs. Jane Brenner, representing the Museum Society, Inc., and Ms. Barbara A. Fleshman, representing the Charlotte County Genealogical Society. These members wish to continue serving and have been nominated by their respective groups. These reappointments are three year terms.
BUDGETED ACTION: None

D. Administration - No Items

E. County Attorney - No Items

F. Budget Office

(1) RECOMMENDED ACTION: Approve the FY2007/2008 County/State Department of Health Contract for the operation of the Charlotte County Health department. BUDGETED ACTION: FY2007/2008 Budget \$1,239,844

Agreement # 2007-063

(2) RECOMMENDED ACTION: Set a Public Hearing on November 13, 2007 at 10:00 a.m. or soon thereafter to adopt an ordinance to update the Five Year Capital Improvements Program (CIP) for FY2007/2008 through FY2011/2012. BUDGETED ACTION: Various Funds - 5 year CIP total is \$1,047,599,000.

(3) RECOMMENDED ACTION: Approve Budget Transfer #07-028 in the amount of \$150,000 from the Sheriff's Contingency Reserve. BUDGETED ACTION: Approve Budget Transfer #07-028 in the amount of \$150,000

G. Community Development

(1) RECOMMENDED ACTION: Approve Petition FP 05-11-09, Final Plat for Charlotte County Park of Commerce - Phase II. Approve Developer's Agreement and surety in the form of a Letter of Credit #9012510 drawn on Community Bank of Naples, N.A. in the amount of \$1,745,359.77. BUDGETED ACTION: None

Agreement # 2007-064

H. Economic Development

(1) RECOMMENDED ACTION: Approve the FY2007/2008 Charlotte County Industrial Development Authority budget. BUDGETED ACTION: None

J. Environmental Services

(1) RECOMMENDED ACTION: Approve the Contract between Florida Department of Agriculture and Consumer Services and Charlotte

County Board of County Commissioners to provide for Charlotte County's Mosquito Control Program. BUDGETED ACTION: None

Agreement # 2007-065

K. Facilities Construction and Maintenance - No Items

L. General Services

(1) RECOMMENDED ACTION: Approve to rescind Award, Bid #07-233, Installation and Removal of Fuel Tanks, awarded to Ten Hoeve Brothers Company of St. Petersburg, FL, in the amount of \$98,499. BUDGETED ACTION: None

(2) RECOMMENDED ACTION: a) Approve ranking of firms for Request for Proposal #07-459, Growth Management - Comprehensive Plan: 1st-Renaissance Planning Group; 2nd-WilsonMiller, Inc.; and 3rd-Tindale-Oliver and Associates; and b) Approve start of negotiations; and c) Authorize the Chairman to sign the contract after completion of negotiations providing the fee does not exceed \$100,000. BUDGETED ACTION: Funding is from Community Development, (Public Safety Fund).

(3) RECOMMENDED ACTION: Approve the Award of request for Proposal #07-327 Design-Charlotte County Boat Ramps to Barraco & Associates of Port Charlotte, Florida at the project cost of \$786,770. BUDGETED ACTION: Budgeted Amounts for Design: West County Boat Ramp \$398,000 - Cattedock Boat Ramp \$400,000.

M. Human Resources - No Items

N. Human Services - No items

P. Information Technology - No Items

Q. Parks, Recreation and Cultural Resources

(1) RECOMMENDED ACTION: Approve and Authorize the Chair to sign the Partners in Parks Agreement. BUDGETED ACTION: Funding for maintenance of the Port Charlotte Beach Park is budgeted within the Parks Maintenance budget. This agreement provides for maintenance of the Butterfly Garden by the Port Charlotte Garden Club.

Agreement # 2007-066

R. Public Safety

(1) *RECOMMENDED ACTION*: Approve the Contract Number 08DS-60-09-18-01 between the State of Florida and Charlotte County in the amount of \$23,784.00. *BUDGETED ACTION*: None

Grant # 2007-040

S. Public Works

(1) *RECOMMENDED ACTION*: Approve a Memorandum of Agreement with the Florida Department of Transportation (FDOT) for right-of-way acquisition services for Aqui Esta Drive from Magdalena Drive to US 41 and authorize Chairman to sign the document. *BUDGETED ACTION*: No action required. Project total is \$8,880,000. Project c419301 Aqui Esta/US 41 to Bal Harbor.

Agreement # 2007-067

(2) *RECOMMENDED ACTION*: Approve a Resolution and Local Agency Program (LAP) Supplemental Agreement with the Florida Department of Transportation to amend the original agreement for the Aqui Esta Drive project from Bal Harbor to Magdalena Drive. *BUDGETED ACTION*: No action required. Project total is \$8,880,000. Project c419301 Aqui Esta/US 41 to Bal Harbor.

Resolution # 2007-167 and Agreement # 2007-068

(3) *RECOMMENDED ACTION*: Request the Board approve a Resolution and Local Agency Program (LAP) Supplemental Agreement with the Florida Department of Transportation to amend the original agreement for the Aqui Esta Drive project from Magdalena Drive to US 41. *BUDGETED ACTION*: No action required. Project total is \$8,880,000. Project c419301 Aqui Esta/US 41 to Bal Harbor.

Resolution # 2007-168 and Agreement # 2007-069

(4) *RECOMMENDED ACTION*: Request the Board approve a Resolution and Locally Funded Agreement with the Florida Department of Transportation (FDOT) for right-of-way acquisition services for

Aqui Esta Drive, from Magdalena Drive to US 41, in the amount of \$129,100 and authorize the Chairman to sign the document. BUDGETED ACTION: The FY08 budget has \$129,100 available in CIP project c410519 Aqui Esta/US 41 to Bal Harbor. Project total is \$8,880,000.

Resolution # 2007-169 and Agreement # 2007-070

(5) RECOMMENDED ACTION: Approve a Resolution exempting all properties within the Mid-Charlotte Stormwater Utility MSBU that have bonafide Agricultural Greenbelt classification from all Stormwater Utility Assessments retroactive to 2005 and authorizing refunds to current property owners. Approve a Resolution exempting all properties within the West Charlotte Stormwater Utility MSBU that have bonafide Agricultural Greenbelt classification from all Stormwater Utility Assessments retroactive to 2005 and authorizing refunds to current property owners. BUDGETED ACTION: Exemptions would mean decreases of revenue collected in FY08 for the Mid County Stormwater MSBU of \$21,088 and the West County Stormwater MSBU of \$6,176.

Commissioner Moore requested clarification of the meaning of bonafide Agricultural Greenbelt. Diane Simpson explained that bonafide Agricultural Classification is for a commercial agricultural business and that applicants must go through a process in the County to receive the classification. Commissioner Moore clarified that if someone in Mid-County wants this classification they should go to the Property Appraiser's Office to file; that there are guidelines that must be followed; and the Property Appraiser's Office determines if the applicant qualifies. Ms. Simpson replied affirmatively.

COMMISSIONER MOORE MOVED TO APPROVE RESOLUTION 2007-171 (MID-CHARLOTTE), SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

COMMISSIONER MOORE MOVED TO APPROVE RESOLUTION 2007-172 (WEST CHARLOTTE), SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

For those who are unfamiliar with the process, Commissioner Cummings explained the procedure of approving the consent agenda and pulling of certain agenda items; and advised that agenda item

X-1 that was addressed by many citizens was approved through the process of approving the consent agenda.

T. Real Estate Services

(1) RECOMMENDED ACTION: Approve the attached Resolution approving the release of a portion of a recorded twenty-foot (20') wide canal maintenance easement located in Port Charlotte Subdivision, Section Thirty-One, and further authorizing the Director of Real Estate Services to execute the County Deed releasing said portion of said easement. (Owners: Joseph R. and Jin Chin Glemaud)
BUDGETED ACTION: None

Resolution # 2007-170

V. Tourism Development - No Items

W. Utilities - No Items

X. Building & Construction Services

(1) RECOMMENDED ACTION: Approve the recommendation and Order of the Charlotte County Code Enforcement Board and order the demolition of an unsafe, vacant structure. On August 1, 2007, the Charlotte County Code Enforcement Board (the "Board") found the vacant dwelling located at 21073 Evanston Avenue, Port Charlotte, in violation of various housing and safety codes and following a 60-day period to obtain a permit for repairs, referred the violations to the Board of County Commissioners for abatement and imposition of costs pursuant to Section 162.09, Florida Statutes. The owners of the structure failed to comply with the Order of the Board to apply for a building permit within 60 days of the hearing date. A copy of the Board's Order and photos of the structure are attached. BUDGETED ACTION: Costs for abatement will be charged to Building Construction Services Account #1031-252009-524-34-0053 which has a beginning balance for FY07-08 of \$140,000 (Standard Unsafe Building Abatement Code) Charlotte County Demolition Contract 2006000335 with Shell Creek Demolition

Y. Other Agencies - No Items

V. REGULAR AGENDA

Z. Regular Agenda

(1) Community Development - RECOMMENDED ACTION: The Land Development Regulations (LDR) consultant, Code Studio, will present a status update and lead the Board in discussion to determine general direction about the following topics:

- 1) Workforce Housing - incentives
- 2) Cluster Housing - objectives
- 3) Signs
- 4) Off-site auto sales
- 5) Residential accessory structures - compatibility
- 6) Concurrency Management
- 7) Height Restrictions
- 8) Density

Nicole Dozier explained that staff seeks discussion and direction as it relates to the Land Development Regulation re-draft; indicated that the County contracted with Code Studio to re-draft the County's Land Development Regulations; and that each topic listed in the packet material would be reviewed.

Workforce Housing - Incentives: Lee Einsweiler stated that many ideas surfaced through staff discussions or the critique and further direction is needed before incorporating them in the draft; and that decisions made now are for direction to help prepare the revised draft of the Land Development Regulations (LDR). Mr. Einsweiler indicated that no uniform policy to deal with workforce housing presently exists and that some draft language has been incorporated that allows a variety of ideas to be used by the workforce housing developers; and that this is about building housing units that are affordable to people at or below 120% of the area's medium income. Mr. Einsweiler commented on possible policy options to performance standards and incentives such as expedited permitting, the housing trust fund, refunding review fees, allowing impact fees for sidewalks to pay for the sidewalks specifically, the potential for deferring other impact fees for a period of time, the opportunity to use the native tree fund to plant trees associated with the sites, a density bonus for workforce housing, and the ability to use the

housing incentives that you propose to embed in the TDU ordinance.

Commissioner Moore agreed that many of the suggestions are good and that things need to be done to encourage workforce housing, but expressed concern with the ability to measure these very well to determine impact on the County and how successful the motions would be.

Mr. Einsweiler stated that we are trying to set a framework to allow the Board to make case by case decisions as developers come forward as to which of the possible incentives are available for a given project; that this would involve incremental decision making over time and does not mean that all would be guaranteed to anyone; that there would be a decision making process in which the Board would be involved before incentives were allowed; and that this would only frame what the package might be.

Commissioner D'Aprile indicated that the items and who would qualify is not specific enough for him to make a decision at this time, but agreed that what was mentioned is a good start.

Commissioner Cummings opined that we need a better idea of who would qualify; more specifics to make decisions; be certain the most severe needs are being addressed and target them specifically; that there should be restraint for density bonuses; that for development we must have a clear line that would be allowed, keep proper accounting, and be certain incentives being offered are commiserate with public gain; and pointed out that presently we have the resources to deal with the affordable housing needs of less than 10% of the population.

Commissioner Duffy indicated that some builders are building medium priced houses, not low income and not extreme; and opined that it is just a common sense approach to encouraging more workforce housing working with Economic Development to meet the needs of potential companies that want to bring development to Charlotte County, and take a reasonable approach with that.

Commissioner Moore asked how 120% was determined for workforce housing. Lorraine Helber explained that in Florida moderate income is defined as households with incomes between 80% - 120% of area medium income; and pointed out that most of the state

funding received is eligible to households up to 120% of area medium income or less.

Commissioner Moore asked what the impact is if that number is played with. Mr. Einsweiler stated that the 80% - 120% bracket are those that we consider moderate income in Charlotte County; that 120% reaches up to the top of what is considered moderate; that the lower the number is set the fewer houses that are available to be sold for a price affordable to those people; and that if you went to 100% you would have less eligible people in the County than at 120%. Mr. Einsweiler agreed with **Commissioner Cummings'** suggestion that the policy should be thought through if this is about helping the entire spectrum of workforce folks; and indicated that the list of incentives is an effort to tackle that modestly to expand the pool of houses available to those folks.

Commissioner Cummings pointed out that his reference is 10% of the new growth and doesn't count the total population; stated that we can provide assistance for 200 per year and are out of whack with the size of the target versus the resources being used; that he would rather do one thing well than try to do everything and not do it well; and opined that we need to be more specific.

Chairman Loftus stated that direction of the Board is to bring back a cafeteria list for review. Mr. Einsweiler stated that they would try to determine what the value of the items would be and where the value would come from.

Cluster Housing - Objectives: Mr. Einsweiler stated that this is an opportunity to preserve additional open space on any given site, protect natural resources and reduce infrastructure costs. Mr. Einsweiler pointed out that presently the cluster provision in the code is weak and not in line with most Florida communities; commented on suggestions in a 2005 staff draft; and requested direction on the Board's intention and what the focus is on.

Commissioner Cummings opined that in the urban service area concentrate on open space; that inside or outside of urban service area he would consider discussing some type of bonus provided the Board adopts a standard that we would meet our Comp

Plan and have it apply to reduction in total platted lots and reduction in build out potential; that in the rural service area there should be more focus on habitat preservation, wildlife corridors and reducing impact of the development on the community; and should be done in combination with additional requirements for low impact regulations to allow wildlife to move through those areas.

Commissioner Cummings stated that there is a substantial benefit, particularly in the rural area, to being allowed to cluster because a fair amount of development would not happen without the ability to cluster because they cannot afford the interior infrastructure costs; that he would be selfish with bonuses in the rural area; and that we should never transfer development units from inside the urban service area to outside the urban service area.

Mr. Einsweiler inquired if there is currently un-platted land inside the urban service area. **Commissioner Cummings** advised that there are some parcels not completely platted out into 80 x 120 lots. Mr. Einsweiler indicated that it seems one of the county's struggles is dealing with the provisions of services to the platted lots within the service area and that while a density bonus may sound like more houses, if it helps us with the platted lot problem, is that still acceptable to consider a bonus; that even though we would not be eliminating additional lots we would be cleaning up the platting pattern within the urban service area, but not necessarily reducing the build out.

Commissioner Cummings opined that it is done by transferring within the urban service area to transition zones where the larger parcels are; that if you offer bonuses to do that it is okay, but that the cap on build out for the county is important because it gives you a clear measuring stick.

Mr. Einsweiler asked if attached products such a two units attached, townhouse, or similar attached products would be an acceptable portion of this idea provided there were compensated open space and if the build out cap obligations were met. **Commissioner Cummings** stated that if it is an additional development unit it has additional impact; and that it is a good idea for guest houses or mother-in-law suites, etc. as long as

you do the accounting and treat it as an additional development unit.

Commissioner Moore stated that in principal he does not like the bonus density concept, but is willing to discuss it; that he sees cluster housing in the urban service area only; and that he sees no problem with attached housing because they can be built less expensively and gives opportunity for more green space.

Commissioner D'Aprile stated that transfer of density should not take place in that situation; that the green space is to be provided by the cluster housing and the density should stay on that property and not be transferred. **Chairman Loftus** opined that it should be all over; that rural has habitat conservation programs conducive to clustering homes; and that once it comes back the Board could have a full discussion.

Commissioner Cummings pointed out that until the Board clarifies the languages for the limitation on the total build out on the county, adopts and implements it as part of these bonuses, he would oppose all bonuses for any kind of density.

Signs: Mr. Einsweiler advised that there have been questions raised about height and location of the current sign ordinance; that the restriction on primary signs does not satisfy some of the national tenants or match what the industry would like to do; and that we would like to consider additional signage in some instances. Ms. Dozier explained that some of the larger businesses such as Lowe's require additional signage and must go through a special process; that we would like to allow large scale developments to have more than one primary sign on the structure; and commented on how that would be done.

Commissioner Moore said he is willing to discuss the concept. **Commissioner Cummings** said he believes the issue about the signs is bigger. Mr. Einsweiler said there are some bigger issues but at this point in time no direction is being requested on those.

Off-site auto sales: Mr. Einsweiler commented on the need to tighten up on the offsite auto sales, special event permitting and criteria for granting such permits.

Commissioner D'Aprile stated that dealers come to Charlotte County from other areas to hold offsite auto sales and opined it is a good time to begin better management; indicated that that dealers in our community pay high taxes and should be protected; and that he has no objection to others coming in to sell items once, but that there should be better control to prevent them from coming every month.

Commissioner Duffy agreed with **Commissioner D'Aprile**; stated that it is unfair to the local car dealers; that there is no benefit to the County when the out-of-town dealers coming in; and opined that they should not be allowed at all. **Mr. Einsweiler** advised that the attorneys on their team suggested an out-right ban is not possible; that staff's investigation shows that out-of-towners are required to pay sales tax in the location where an item is sold; and that we are currently focused on narrowing time and manner since an out-right ban is not appropriate.

Commissioner Moore stated that the dealers are supposed to pay sales tax, and asked if Charlotte County is getting them. **Mr. Loucks** explained that sales tax is paid to the Florida Department of Revenue; that the issue is which county gets credit for those sales; and stated that we must check with the State to determine how that happens.

Commissioner D'Aprile explained the sales tax payment procedure by out-of-town dealers selling in Charlotte County. **Mr. Einsweiler** stated that we need to look further into the issue to make certain Charlotte County gets credit for it; and indicated that outdoor sales should not be banned because it is hard to differentiate.

Commissioner Moore stated that the largest complaint he hears is that not all dealers are being treated the same. **Commissioner Cummings** inquired if the suggestion is that tent sales only be allowed where tent sales could be allowed all the time. **Mr. Einsweiler** replied affirmatively. **Commissioner Cummings** asked if the zoning for a church allowed a tent sale. **Mr. Einsweiler** stated that the underlying zoning for a church may start to become an issue if they want to be involved in outdoor sales. **Ms. Dozier** comments on difficulties experienced with the current language in the ordinance that does not designate that specific

special events should occur; and specific language to limit the sales to one auto dealership, not each of the manufacturers within the auto dealership.

Commissioner Cummings inquired what zoning classification would be allowed to have these temporary sales under your proposal. Ms. Dozier indicated that she did not have the exact zoning classifications at this time. Mr. Einsweiler opined that **Commissioner Cummings** is saying that if we make this tie we must be cautious because there would be other uses affected by the limitation; and indicated he does not know if the non-profits can be differentiated from the for-profit corporations.

Commissioner Cummings stated that when this discussion was previously had it was made apparent that we are prohibited by constitutional law from differentiating between what's a local business and what's out-of-town business, and that we cannot institute barriers to trade. **Commissioner Cummings** stated that there is an infinite number of ways to get around the number of times allowed for a certain entity; that if you are trying to solve that by saying only a certain number of times per year it seems you must say a given property can only have a certain number of events per year and it is up to them who they grant that to. Mr. Einsweiler stated that it is definitely intended to be tied to the specific property per year.

Commissioner Cummings stated that his understanding is that you would only allow tent sales where goods may be displayed on a normal basis outside their building which he believes includes commercial intensive and industrial, but not commercial general. Mr. Einsweiler clarified that where car sales are allowed in a district, temporary car sales would also be allowed; that where car sales are not allowed in a district, a temporary car sale would not be allowed, even by special event permit. Commissioner Cummings asked if this would be expanded into other types of temporary sales. Mr. Einsweiler replied affirmatively. **Commissioner Cummings** opined that those are allowed by right in commercial general. Mr. Einsweiler replied that currently the special event permit is not linked to zoning, but that it will be.

Commissioner Moore stated he would not like for it to interfere with schools, festivals by non-profits and the like.

Commissioner D'Aprile opined this is a way to complicate things; that zoning categories is a good idea; but possibly consideration could be given to having only 4 tent sales allowed in Charlotte County, first come, first serve, which would allow a limited number of outsiders and not break any laws. Mr. Einsweiler indicated they would look into that as an option.

Commissioner Cummings cautioned that in doing this that they talk to the people who own the property and would have a loss of revenue.

Residential accessory structures - compatibility: Mr. Einsweiler advised the item of Residential accessory structures - compatibility is as it relates to the size and appearance of accessory structures in residential zoning districts; anything over 250 sq. ft, which is larger than a shed or one car garage located on a residential lot. Mr. Einsweiler stated that the question is if we should impose compatibility of materials, heights or other items associated with large scale garages, etc. on standard lots and do a better job of matching the existing structure. **Commissioners D'Aprile and Cummings** agreed that had already been done.

Ms. Dozier commented on policy of having metal structures on standard single-family lots which were not compatible with the primary structure, indicated that the code does not distinguish size of accessory structure on larger lots, explained staff proposals and ways to make these more compatible.

Commissioner Cummings opined that it is was never intended for the rural service area to stucco their barn; has no objections to lowering it from the current 625 sq. ft.; and indicated that if only a garage is put on the lot that it should not be excluded from the conditions.

Commissioner Moore commented on an area in Gulf Cove where a 3-story garage was built in a residential area where a bus could be placed, stated that it is legal, but he does not agree with it. **Commissioner Duffy** commented on a similar situation in her neighborhood, and indicated they could be okay for rural areas. **Commissioner D'Aprile** commented on how this came about and indicated that special exceptions can be given.

Height Restrictions: Mr. Einsweiler commented on regulating height throughout the county and inquired if there are portions of the county where greater height appropriate or other areas where less height is required. **Commissioner Cummings** opined if a community does a neighborhood plan that should give them some choice of heights; that he does not care how tall buildings would be in Murdock Village; that we must be careful on height restrictions close to the water; and that a variance could be granted to height restriction if being done to create open space around the building.

Chairman Loftus agreed with **Commissioner Cummings**. **Commissioner Moore** stated he likes low heights along the water; that there is no market today for greater heights but that time will come one day; and has no objections in the proper places.

Chairman Loftus disagreed with **Commissioner Moore** on heights along the waterfront and commented on what has been done in the Charlotte Harbor CRA. **Commissioner Duffy** agreed with increasing height standards; stated that more hotels are needed in Charlotte County; that people want to go to the beach and it is hard to put a hotel on water unless it is higher; and opined that height restrictions for that is appropriate.

Density: Mr. Einsweiler advised that allocation of density was covered in the Transfer of Density (TDU) discussion; that other than the submerged lands questions, across the state wetlands are typically allocated density; and indicated that the fundamental question is should all types of land receive an equal allocation of development rights under the ordinance, submerged lands, wetlands, and other potentially unbuildable lands.

Commissioner Cummings commented on when development units should or should not be counted when net density calculation is done; indicated that the right to develop is not the same as the right to transfer; that it should be a public good and meet growth management standards; that care should be used with the term density; and keep the county's total countywide net density under control. Mr. Einsweiler stated that the issue doesn't affect us until we get down to the final version of the ordinance and the buildable land study.

Commissioner Cummings stated that without the hard clear line under the county's total net density he would not oppose transfers but would oppose any kind of bonuses.

Commissioner Moore requested a brief summary of the conversation had on the TDU's yesterday on this topic. Jeff Ruggieri stated that there was not much discussion on gross net and if it should be included in the criteria for establishing a sending zone, but recalled that if someone owned the property they could transfer development off their property because it is consistent with our current regulations.

Mr. Einsweiler inquired if the buildable lands project ends up deciding that submerged lands are undevelopable and we were to change the rest of the scheme of it that TDU would follow along and be modified accordingly. Mr. Einsweiler stated that it appears the only reason there is an allocation for submerged lands now is because the current system allows them to be considered buildable; and inquired if we were to shift the policy for the system as a whole and consider them unbuildable would they also be taken out of TDU.

Mr. Ruggieri stated that it would require a substantial change in the TDU functions because those lands actually have value; that we would make it work, but it would require us to re-look at the ordinance and probably go back to having two definitions, one for the TDU and one for the county, which is what we are trying to get away from. **Chairman Loftus** stated that we need to address the density and the height at the same time; and indicated that it is an effective tool for redevelopment and infill areas. **Commissioner Cummings** opined that the main thing is to have a clear starting point and indicated that the study would be that good clear point.

Residential Estate District: Mr. Einsweiler stated there were items that were not on the list but should have been; indicated that we are looking to add a new zoning district, which would focus on a sustainable large lot that could have an alternative waste treatment on it; that we don't ever expect to provide sewer to; and that this large lot district could be used in the outlying areas where we never intend to provide future sewer service. Mr. Einsweiler advised that all we are looking

for is approval to chase down the number of what the lot size is that might be sustainable in those areas.

Mr. Loucks indicated that this would be an instance where you have a number of smaller lots with no ability to put a septic system in each individual lot, but you could have one lot that would serve four or five different lots tied into it; basically a community septic system. Mr. Einsweiler advised that we can make that part of it, which speaks to clusters as well; that community septic is one consideration, but the other is an estate lot district of a 2,3, or 4 acre lot district, which would be applied and remain in that character in perpetuity.

Chairman Loftus stated he sees no objection for staff to look into this. **Commissioner Cummings** opined that this is for rural service area and goes beyond just waste water treatment by going into preserving wildlife corridors, stormwater, and habitat issues that go along with rural estate living. **Commissioner Cummings** indicated there would be a lot of this in East County and it should be done in a more compact way.

Commercial excavation and mining zoning district: Mr. Einsweiler indicated that recently an ordinance was adopted regarding excavation and mining; and commented on the possibility of a new zoning district for doing commercial excavation and mining. Mr. Einsweiler advised that the addition of a zoning district means there are two decisions being made; one decision of whether the land use might be appropriate, and a second decision of whether a permit would be appropriate on a specific property. Mr. Einsweiler stated that it would add an additional level of protection; that it would mean banning that use in all other districts at least at the large commercial scale, and provide a specific zoning district for that use; and pointed out that the mechanism has worked very well in Sarasota County. **Commissioner D'Aprile** agreed it should be done.

Commissioner Cummings clarified that there would not only be a mining zoning category, but an underlying land use category for mining, so they would have to go through the Legislative and the Quasi Judicial. Mr. Eisenweiler replied affirmatively. **Commissioner Cummings** said with that decision we can build in whatever criteria we deem appropriate to protect the surrounding properties and deal with traffic issues and the like.

Commissioner Cummings inquired about timeframe. Mr. Einsweiler indicated it could be done immediately. **Commissioner Duffy** commented on the current manner with the Special Master and asked if that would change. Mr. Einsweiler advised it would not and indicated that the rezoning and land use would come before the Board.

Concurrency Management - Mr. Einsweiler stated that this is a tough topic; that he seeks guidance today, but opined it would not be enough to get us there; indicated that the notion is imbedded in law; that policy direction is needed on what facility should be included, fundamentally of when development would be denied; commented on when it could be turned down and instances when it still occurs.

Mr. Einsweiler explained the difficulties and advantages of using this; indicated that timing and phasing could be of importance; and commented on how the process works. Mr. Einsweiler advised that Charlotte County has components in place but cannot say no to development and inquired if you are ready to say no when concurrency is not available. **Commissioner Cummings** stated yes. **Chairman Loftus** commented on complying with Senate Bill 360. Mr. Einsweiler advised that almost everyone has this and we need to borrow someone else's model.

Commissioner Moore cautioned on difficulties that could occur in West County. **Commissioner Cummings** commented on it following state law and focus on serving needs of existing. Mr. Einsweiler cautioned on using this tool and difficulties that could arise.

Commissioner Moore requested that Z-3 be heard after the break.

RECESS: 11:10 AM - 11:19 AM

(2) Community Development - **RECOMMENDED ACTION:** Approve the satisfaction and release of liens filed against Joseph E. and Ruth L. Daniel in the amount of \$80,000.00 dollars, which originated from Code Compliance Case Number's 1991-045, 1994-030B, 1998-260 and 2002-282. The satisfaction and release of the liens shall not be filed, and are contingent upon the receipt and clearance of certified funds in the amount of \$80,000.00 dollars by November 2, 2007 at 3:00 p.m.

Andre DeShane reviewed the material furnished in the packet material and occurrences that created the liens; and spoke in favor of approving release.

COMMISSIONER D'APRILE MOVED TO APPROVE SATISFACTION AND RELEASE OF LIENS FILED AGAINST JOSEPH E. AND RUTH L. DANIEL IN THE AMOUNT OF \$80,000, WHICH ORIGINATED FROM CODE COMPLIANCE CASE NUMBER'S 1991-045, 1994-030B, 1998-260 AND 2002-282, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

(3) Human Services - RECOMMENDED ACTION: Review and Consider update information on Hurricane Housing Recovery funds and provide direction for use of funds currently committed to Multi-family development projects and revision of HHR plan.

Lorraine Helber explained the purpose of placing the item on the agenda, the timeframe and conditions upon which the funds must be spent. Ms. Helber stated that all funds have been committed; that formal written approval of a fourth year extension has been received and we have until 2009 to spend all funds. Ms. Helber advised that Board committed funds to 4 multi-family projects; that of those projects Charleston Cay is the only constructed and occupied; and explained reasons for delays on the other projects.

Ms. Helbert advised that Hampton Point is withdrawing its request for money; that written notification will be forthcoming; that \$4.9 million will now be available for the County to use; and that any action for use of those funds would have to come back before the Board.

Ms. Helber stated that staff needs direction from the Board if it wishes to continue the financial commitments for Marian Manor and Charlotte Crossing.

Lloyd Boggio spoke on behalf of Charlotte Crossing; stated that it would make the deadline; that financing is in place; that the issue on delay has been due to difficulties with US Fish and Wildlife; that the plan was submitted 2 1/2 years ago but was just approved 10 days ago; commented on what has been done to date and difficulties that have transpired in the past to put the project in its current position. Mr. Boggio advised that they

expect to break ground early next year and that the project would be completed even if extensions are required; and commented who would be served through this project.

Chairman Loftus thanked Mr. Boggio and stated that the Board understands the difficulties and looks forward to project moving along. **Commissioner D'Aprile** opined that this organization has gone above and beyond in changing the original plans to meet the needs to community and wants to be certain the project receives the funding needed.

Sister A. Cathryn Bustow spoke on behalf of the Marian Manor project and reviewed what the project consists of. Sister Bustow requested that the Board consider allowing Manor Manor access some of the additional funding that is now available from the withdrawal of Hampton House; indicated that a loan agreement could be negotiated for the additional funds; and stated that the project is ready to go forward.

Ms. Helber said staff is looking for a vote from the Board to continue commitments, or not continue commitments, to Charlotte Crossings and Marion Manor. Ms. Helber stated that staff would like direction for where the need of the community is for the \$4.9 in funds that are available; indicated that they could not ask for anything to be done with the funds today; and stated that the packet includes some suggestions, but not all.

COMMISSIONER D'APRILE MOVED TO APPROVE AN EXTENSION OF FUNDING COMMITMENTS TO MARIAN MANOR AND CHARLOTTE CROSSINGS, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 5:0.

Ms. Helber said staff seeks general guidance and opinions on where the Board believes the need in the community is for use of the \$4.9 million. Chairman Loftus opined that additional funds should be allocated to the Marian Manor project.

Commissioner Moore requested clarification of the amount of increased assistance to Marion Manor. Ms. Helber commented on her discussion with Sister Bustow.

Sister Bustow reported that in order to begin construction in 30-45 days a minimum of \$3 million is needed, but that \$3.5

million would be very helpful and then arrange to do it as a loan Sister Bustow clarified that \$1.2 million already committed plus an additional \$3.5 million is being requested.

Commissioner Moore explained that the Board cannot officially do anything today due to the advertising guidelines. Ms. Helber advised that the ad was posted 10 days ago and expires November 15, 2007. Sister Bustow stated that the bank would approve a loan if the county commits to the HHD. Ms. Helber explained that it could be brought back at the December meeting. Mr. Loucks advised that a special meeting could be called for this purpose.

Commissioner D'Aprile inquired if there had been other interest since the advertisement. Ms. Helber commented on those she has heard from. Sister Bustow advised that their proposal will be revised.

(5) County Attorney - *RECOMMENDED ACTION*: Performance Evaluation for Charlotte County, County Attorney.

Chairman Loftus stated that an evaluation was done for the Charlotte County County Attorney; and that the rate increase is 5.18%.

COMMISSIONER D'APRILE MOVED TO APPROVE RATE INCREASE OF 5.18% FOR THE CHARLOTTE COUNTY COUNTY ATTORNEY, SECONDED BY COMMISSIONER MOORE.
Motion Carried 5:0.

(6) Commission Office - *RECOMMENDED ACTION*: Appoint current alternate member, Richard Buszka as a regular member to complete the term of Connie Volpe who resigned on October 8, 2007, on the Rotonda West Street and Drainage Advisory Committee. The term shall expire on February 13, 2008.

COMMISSIONER MOORE MOVED TO APPROVE APPOINTMENT OF THE CURRENT ALTERNATE MEMBER, RICHARD BUSZKA, AS A REGULAR MEMBER TO COMPLETE THE TERM OF CONNIE VOLPE WHO RESIGNED ON OCTOBER 8, 2007, ON THE ROTONDA WEST STREET AND DRAINAGE ADVISORY COMMITTEE. THE TERM SHALL EXPIRE ON FEBRUARY 13, 2008, SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

VI. PUBLIC HEARING AGENDA - 10:00 AM (Proofs of Publication were in order.)

(1) Utilities - RECOMMENDED ACTION: Water Shortage Conditions and Water Emergencies Ordinance to allow Charlotte County Utilities (CCU) to enforce water restrictions.

Jeff Pearson explained that this agenda item requests approval for an amendment to the water shortage conditions and water emergencies ordinance, which would allow CCU to enforce the water restrictions in addition to the current methods set forth in the existing ordinance. Chairman Loftus opened the public hearing.

John Saffer opined that approval of the amendment would hurt landlords; and indicated that the rule should be adjusted so if the tenant uses the water and leaves without paying that the landlord is not responsible for it.

COMMISSIONER MOORE MOVED TO APPROVE CLOSING THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.
Motion Carried 5:0.

Commissioner Moore agreed that Mr. Saffer brings up a good point, but understands and agrees with what CCU wants to do, and inquired what could be done about the landlord matter. Mr. Pearson commented on the County collections and credits policy; indicated that Charlotte County must pay the Peace River Water Authority for the water used regardless of the situation; and pointed out that in the current policies and allowed by state statute, Charlotte County no longer must incur further cost, and that there is no guarantee that you would collect unpaid utility fees because they are dischargeable in bankruptcy.

Mr. Loucks explained that right now if a landlord has property being rented out as a business and making money the risk is with the landlord; that if something different is done to alleviate their responsibility, the risk shifts to the rest of the CCU rate payers; and that it is a policy issue of where risk and liability is to be reflected.

Commissioner Duffy stated that she thought the water account would be in the tenant's name and subject to water turnoff and fine; and inquired if there is a way to have tenants post a

bond or something to assure payment by them instead of the landlord. Attorney Knowlton stated that this deposit should be handled in the agreement between landlord and tenant.

Joan Brown indicated she has met with the Landlord's Association; addressed difficulties experienced and fees that are assessed on the owner's bill; and advised that the landlord is not accountable for tampering unless the landlord is shown to be aware of it. Ms. Brown commented on the creation of a new cycle in the system to transfer fees for bad checks, etc. so the tenants who leave the landlord in a lurch can be tracked; and stated that ultimately the owner of the property is responsible for the bill regardless of how the billing gets set up.

Commissioner Cummings opined that tracking tenants is a good idea, but cautioned imposing new additional upfront costs because of the difficulty of renters paying upfront costs. **Chairman Loftus** opined that this should not begin until the people are property educated. Mr. Pearson stated that February 1, 2008 would be more realistic in order for proper information to get out to the commercial people and public on what the ordinance states, and is better timing because of the drought conditions.

Chairman Loftus opined that we should reach out to all homeowner groups and gated communities to look at drought resistant vegetation. Mr. Pearson requested that the effective date be changed to February 1, 2008 from what is on the proposed ordinance.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE # 2007-075, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 5:0.

Commissioner Duffy requested that CCU work with the landlords. Mr. Pearson agreed.

(2) Utilities - **RECOMMENDED ACTION:** Continuation of October 9, 2007 Public Hearing Resolution No. 2006-170 to amend Low Pressure Sewer Installation fees & add Unauthorized Water Use Charge.

Mr. Pearson advised this agenda item is a continuation of the October 9, 2007 hearing to approve amendments to Resolution No. 2006-170 to amend Low Pressure sewer installation fees and add

Unauthorized Water Use Charge. **Chairman Loftus** opened the public hearing.

COMMISSIONER MOORE MOVED TO APPROVE CLOSING THE PUBLIC HEARING, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 5:0.

Chairman Loftus expressed concern of an increase after prices were previously given, even though the previous prices were not firm.

COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION #2007-173, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 5:0.

Mr. Loucks explained that the Board cannot be asked to approve an MSBU without some sense of what the number would be; that because projects could be a couple years from the lead time when the MSBU is first created to when the project is bid out, we intend to begin providing a range.

(3) Community Development - **RECOMMENDED ACTION:** Impact fees for residential dwelling units to the 1998 residential impact fee schedule.

Nicole Dozier indicated that through previous discussions on impact fees it was determined that staff would come back with changes to the impact fee ordinance to revert the residential portion of the impact fees back to the 1998 fee schedule; that staff completed the task, which is the item before you.

Commissioner D'Aprile advised that he would like to add the commercial areas to the request of approving reduction of impact fees. **Commissioner Moore** stated that he would support that.

Attorney Dan Gallagher reported that there are legal issues with adding the commercial areas at this time and that it would need to be considered at a later time. **Commissioner Moore** indicated he has no objections to it being considered later. Attorney Knowlton inquired if the concern was on advertising. Attorney Gallagher advised there are other issues. **Chairman Loftus** opened the public hearing.

The following persons spoke in favor of the rollback on impact fees: Julie Mathis, Alan Mitchell, Ron Hill, Suzanne Graham, Richard Sinclair, Jim Sanders, Jon Bednerik, Sharon Naihofer, and David Allgood.

Franklin Bishop expressed concern with lowering the impact fees.

COMMISSIONER MOORE MOVED TO APPROVE CLOSING THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE # 2007-076, SECONDED BY COMMISSIONER MOORE.

Chairman Loftus commented on his opposition to reducing the impact fees; indicated that the Board needs to do anything it can to move economic development along; and stated that this money is need for infrastructure.

Commissioner D'Aprile agreed with Chairman Loftus' concerns, but opined that it is the Board's responsibility to try this with the hope that it works to stimulate the building industry.

Commissioner Cummings stated that we are collecting millions of dollars in impact fees and that there is a cost to do this with little to no benefit.

Motion Carried 3:2. Chairman Loftus, and Commissioner Cummings opposing.

(4) Public Works - RECOMMENDED ACTION: Native Tree Replacement Fund Ordinance.

Tom O'Kane reviewed the packet material furnished and spoke in favor of approving the ordinance. Chairman Loftus opened the public hearing.

COMMISSIONER D'APRILE MOVED TO APPROVE CLOSING THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE SEC. 3-2-195, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

Attorney Knowlton requested that the Native Tree Replacement Ordinance be read into the record; and advised that it had not so been done when the motion for approval was made. Commissioner D'Aprile read the Ordinance into the record.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE #2007-077, SECONDED BY COMMISSIONER CUMMINGS.

Motion Carried 5:0.

VII. PRESENTATION AGENDA - No Items

VIII. PUBLIC WORKSHOP AGENDA (Public input permitted.) - No Items

IX. BOARD WORKSHOP AGENDA (No public input.) - No Items

X. CITIZEN INPUT - ANY SUBJECT - None

AA. County Administrator: - None

BB. County Attorney: - None

CC. Commissioner Comments: - None

RECESS: 12:40 PM - 2:00 PM.

V. REGULAR AGENDA

Z. Regular Agenda (Continued)

(4) County Attorney - RECOMMENDED ACTION: 2:00 PM - Public Input, Board discussion of Mosaic's settlement offer.

Attorney Knowlton stated that she provided preliminary comments October 9, 2007 on Mosaic's offer; that the Sarasota County Commission would meet October 24, 2007; that the Lee County Commission would hold two meetings, the first November 6, 2007 at 2:00 PM for governmental entities involved in the Mosaic litigation, open to the public, but no public input; and that the second meeting, yet to be scheduled, would be for Mosaic representatives to make their presentation and would be under the same format.

Commissioner Duffy thanked the Board for allowing her to represent the County in the negotiations; indicated that the goal is to protect our rivers and harbor, which was made clear to Mosaic as being the highest priority; thanked **Commissioner Cummings** for his efforts; indicated that she respects his passion, tenacity and drive in this arena and believes it was instrumental in where the negotiations are today; and stated she hopes all can be open-minded and listen to all opinions.

Chairman Loftus called for citizens input.

The following spoke in opposition of the proposed Compact Agreement with Mosaic: Bruce Pomeroy, Chrishel Schmidt, Dr. Keskaddos, Captain Wayne Gunther, Mary Jelks, Ted Goodwin, Helen King, Sarah Hollenhorst, Chris Costello, Ed Hittson, Jim Cooper, Sue Reske, Debbie Highsmith, Jim Story, Fran Reimondo, Marilyn Goodwin, Alan Squires, Teresa Martin, Sydney Bacchus, Edie Driest, Percy Medintz, Chris Stone, Dr. Tom Fraser, Marvin Medintz, Lynne Seibert, Misty Nichols, Clarke Keller, Frank Kirkland, Raymond Jasica, Ruth Bromberg, William Clarkson, Dennis Mader, Lawrence Martin, Jim Reske, Dave rank, Andrea Story, Barbara Grettinger, Ronald Smith, Kathleen Rohrer, Pete Quasious, Brenda Bosman, David Goodrich.

RECESS: 4:15PM - 4:25 PM

The following spoke in favor of the proposed Compact Agreement with Mosaic: Joe Dixon, Bill Miller, Jeff Clyne, Jim Abbitt, Bill Cook, Adrienne Reeves, Mike Daigle, Todd Parker, Alan Luft, Santino Provenzano, Victor Reeves, Suzy Hackett, Bruce Connor, Jeff Cox, Tim Hartman.

Public Input was closed.

RECESS: 5:10 PM - 5:15 PM

Attorney de la Parte introduced Dr. Tom Janicki and Gary Wantland and commented on their expertise; stated that his powerpoint presentation would concentrate on the actual contract language; and that if there are negative issues he would make suggestions of things that could be done to resolve the issues or improve the Compact.

Attorney de la Parte pointed out that his negative comments about the Compact are not to be interpreted as being negative with respect to Mosaic or the representatives he has worked with in the settlement negotiations, but that as the county representative he must look at the actual language that is written and not intentions or promises.

Attorney de la Parte commented on his criteria for judging the Phosphate Compact; that you look at benefits you receive, what you are giving up (costs), and enforceability; that if the benefits do not exceed the costs or if there are problems with the enforceability then those are questions that would give you concern in signing the agreement; that if the benefits outweigh the cost and you are comfortable that the contract is enforceable, then the agreement is one you should sign.

Attorney de la Parte opined that there are 6 benefits to Charlotte County as reflected on page 2 of the packet material; commented on language reflected in paragraph 4 regarding mine dewatering; reviewed excerpts from the Ona & Altman Environmental Resource Permits (ERP's); and indicated that the language in both those permits is stricter than the language than is currently in the contract. Attorney de la Parte recommended that paragraph 4 be written to include for mines deeper than 55' the language accepted by Mosaic in the Ona Ft. Green extension permit, and for those mines less than 55' deep to include language as reflected in the Altman settlement agreement.

Attorney de la Parte commented on the standards being applied for water quality and quantity impacts as contained in paragraph 5, which sets out the general objectives, and paragraph 6, which indicates how the objectives would be met; indicated that the standards are more lenient than the current Department of Environmental Protection (DEP) rules and standards that apply; that the Commission has always supported the concept that any settlement entered into should maintain or improve the existing pre-mining water quality; stated that the language proposed in paragraph 5 is more lenient than the objective that Charlotte County has always had in terms of way to approach settlement in these procedures; and provided recommendations.

Attorney Knowlton stated that previously the Board wanted the water quality to be returned to pre-mining condition. Attorney

de la Parte said that is clearly not the case in paragraph 5 of the agreement.

Attorney de la Parte reviewed the Reclamation Standards set forth on page 6 of his presentation and recommended in Exhibit "C" to allow Charlotte County experts to work with Mosaic experts to develop a set of reclamation standards that are stricter than those found in the current Exhibit "C", but not necessarily as strict as those contained in the original proposal that Mosaic did not agree with.

Attorney de la Parte advised that paragraph 3 of the contract has a provision to provide stricter clay settling area (CSA) standards and that Exhibit "B" identifies those stricter standards; indicated there have been over 20 major discharges in the Peace River Basin for CSA's in the past 30 years; that technology has improved but now the CSA's are moving closer south to the mouth of the Charlotte Harbor; that it is important the CSA design standards be state-of-the-art standards that the industry currently requires for earth and embankments; and opined that the Exhibit "B" standards can be improved.

Attorney de la Parte advised that the first slide on page 7 of his powerpoint material is the CSA standards copied from paragraph 4 of the 2003 Settlement Agreement; pointed out that in addition to the engineering requirements in 4-A there was also language requiring Authority inspection and real time monitoring which are not found in this agreement. Attorney de la Parte commented on the CSA standards in Exhibit "D" shown on the side of the slide, environmental insurance, and language that would allow Mosaic not to maintain the agreement. Attorney de la Parte stated that Mr. Wantland was retained as an expert with familiarity with clay settlement areas and earth and embankments to address issues, and referenced 3 additional criteria that Mr. Wantland suggested as referenced on the second slide on page 7.

Mr. Wantland stated that he was requested to review the proposed criteria offered by Mosaic as part of the settlement and compare it to current DEP design standards and other standards written or developed for the South Florida Water Management District's (SFWMD) accelerate programs as part of its Everglades restoration; and reviewed the additional 3 criteria he recommends, which he opined are reasonable and achievable and

would improve reliability if enacted as part of the settlement agreement.

Attorney Knowlton requested an explanation of freeboard. Mr. Wantland explained that freeboard is the difference in elevation between the crest of the embankment surrounding impounded water and the normal pool water surface elevation; that currently it is set at 5 feet, but could vary depending upon location. Attorney de la Parte opined that if reliability is designed in all 3 stages of the life of the clay settling area and be certain it meets those reliabilities, the probability of a problem is reduced.

Commissioner Duffy requested clarification on Mr. Wantland's recommendation on miles per hour (mph's) for wave size and run up design. Mr. Wantland said there are 2 storm events to consider, 100 mph storm event and 90 mph storm event and explained his recommendation for each; and indicated that DEP is not specific in terms of what it requires. Attorney de la Parte explained that the 2003 settlement agreement gives the current standards for the entire mined area, but that Mr. Wantland identified 3 other additional other criteria that could improve the reliability of those clay settlement areas.

Attorney de la Parte reviewed the Stream Buffer Zones slide as referenced in the packet material and indicated that flood plain buffer zones vary by county. Attorney de la Parte reported that there has been a loss of over 300 miles of streams in the Peace River Basin because of different activities and stated that it is important that those streams producing good water quality and quantity that we see in Charlotte Harbor are left relatively not impacted. Attorney de la Parte stated that Dr. Janicki was requested to look at the list of streams and make recommendation; referenced a list of 33 streams that Dr. Janicki believes should be protected; and advised that 5 streams have been listed in the Myakka River Basin around where Mosaic is proposing to mine, which is not included in their proposal.

Dr. Janicki commented on the cumulative impact study done by DEP; expressed concern with the findings of the loss of so many miles of streams in the Peace River Basin due to mining, urbanization and agriculture; and opined that the Compact provides an opportunity to address at least one of the activities that

resulted in the loss of streams. Dr. Janicki advised that another phase of the DEP work is development of a watershed management plan which would hopefully address the issue of stream loss with respect to agriculture, mining, and urbanization.

Dr. Janicki stated that from a list of streams he was provided with put together a list that is more inclusive of not only the Myakka, but other streams within the Peace River Basin. Dr. Janicki reported that the atmosphere has been good in terms of discussion and compromise and he hopes that he can sit down with Mosaic experts, review the streams he is considering, and provide a prioritization and a more comprehensive and protective plan to avoid future loss of streams.

Commissioner D'Aprile inquired about the chances of regenerating the lost streams and who might do that. Dr. Janicki opined the most important thing we got for our money in the litigation is that the Department and Industry agreed that stream restoration is important and the Department is requiring the Industry to provide plans for restoring streams; and indicated that the science and engineering is there to restore some of the streams and that he hopes as part of the watershed management plan some of the streams will be brought back. Dr. Janicki stated that someone must step up and put up the money to do this, but that there are opportunities for trade-offs or mitigation that should not be ignored.

Attorney de la Parte recommended that the experts get together and determine a list of streams they can jointly recommend to the Board that need this level of protection.

Attorney de la Parte indicated that paragraph 9 in the agreement provides for a \$50 million policy for discharges or failures of CSA's; that paragraph 5 of the March 5, 2003 Settlement Agreement already requires a \$25 million policy; but that it is unclear in the Compact if the \$25 million is part of the \$50 million or in addition to the \$50 million. Attorney de la Parte advised that insurance can only be maintained as long as Mosaic is able to access the policy on the terms that are available at the time the agreement is executed and that Mosaic may substitute an alternative financial mechanism based upon general industry conditions. Attorney de la Parte pointed out that the requirements on Mosaic's part are decisions that Mosaic can make

without the consent of the county; that the county's only recourse at that point is arbitration; but that there is no stand-down provision in the arbitration process that states parties are frozen in place until the arbitration process is completed. **Commissioner D'Aprile** inquired if Mosaic is the beneficiary of the insurance policy. Attorney de la Parte stated it is not clear who the beneficiary is.

Attorney Knowlton commented on her recommendation that if Mosaic was to have an alternative form of security that the standard county language used in all its contracts, which is that the substitute form of assurance be in a form and an amount acceptable to the county, be included; and opined that any alternative form of security should be in a form and amount agreeable to all governmental entities that sign on to the Compact. Attorney de la Parte pointed out that the \$50 million figure was from a draft prepared in February and stated that if discussions proceed that there should be an assessment of what the amount of insurance should be rather than just simply putting in \$50 million on this item.

Commissioner D'Aprile inquired what was to prevent Mosaic from cancelling the policy without the county knowing about it. Attorney de la Parte explained that the way the contract is written the county would know about it, but Mosaic could claim they could not get coverage at the same amount or with the same premium or conditions that they did today, and the language allows them to reduce or terminate the insurance.

Attorney de la Parte reviewed Mining Limits and Exhibit "A" of the Phosphate Compact indicated on page 10 of the handout material; and pointed out that State Road (SR) 64 was placed on the map because the original draft agreement of February had a provision that limited mining south of SR 64. Attorney de la Parte stated that the reason that provision was put in the February agreement is that there was a great deal of debate of whether or not to require an Area Wide Environmental Impact Study (AEIS.)

Attorney de la Parte indicated that the initial thought was that if Mosaic agreed to limit mining to north of SR 74 then many of the mines they were proposing, such as everything south of Ona and the Pine Level Mine, would not be areas Mosaic would mine

and there would not be a need for an AEIS. Attorney de la Parte said that in previous discussions Mosaic indicated this provision would be a deal killer and that they needed to have the dotted area where they would be able to mine; and advised that his recommendation on this provision is if you agree with the dotted area Mosaic identified as their future mining area, then the AEIS is necessary.

Attorney de la Parte pointed out that language provided in paragraph 10 indicates Mosaic would provide "meaningful storage volume" to the Authority within 15 years; that "meaningful storage volume" is not defined in the agreement; that the agreement states Mosaic would provide the reservoir within 20 years; and that it is uncertain whether the Authority must pay for the reservoir site. Attorney de la Parte opined that if the Board of County Commissioners (Board) goes forward with the agreement the contract should be clarified to make it clear that "meaningful storage volume" actually means, and that it is clear that the reservoir would be donated.

Attorney de la Parte commented on the costs to Charlotte County and Legal Challenge Waiver reflected on page 12, and Public Comment reflected on page 13 of the handout material; recommended possibilities and explained the pros and cons.

Attorney de la Parte opined that the Public Comment Waiver would not serve the county well and should be stricken. Attorney de la Parte stated that the Release of Claims provision in paragraph 15 releases all existing claims and all claims that the county may have in the future that they are aware of, or should be aware of, at the time the agreement is signed; and that if the contract is terminated for any reason the release provision continues in perpetuity. Attorney de la Parte opined that the release provision is overly broad and should be narrowed only to existing claims.

Attorney de la Parte commented on the Arbitration section in the packet material and reviewed the Arbitration Process.

Attorney de la Parte stated that the arbitration process should be limited to benefits the county receives; that none of the new standards or requirements applies to Mosaic's existing mining

activities but the arbitration clause appears to be broader. Attorney de la Parte advised that the arbitration process requires that it be held in front of 3 attorneys and be conducted under state court proceeding; commented on costs involved; and suggested that the requirement to comply with state court rules be taken out and turn it into an expert arbitration allowing Mosaic to appoint an expert representative, the disputing party to appoint an expert representative, the experts pick the third expert, and resolve the technical issue without having to comply with the rules of the court.

Attorney de la Parte advised there should be a provision that the parties must stay the course and stand down until the arbitration process is complete, or create a provision where the parties can go to court to enjoin someone from violating a provision in the agreement; and pointed out that the current agreement does not provide this.

Attorney de la Parte indicated that paragraph 19 allows Mosaic to unilaterally terminate the agreement and expressed disapproval of the language; commented on the monitoring and assessment plan and suggested language be included requiring that the monitoring plan also meet the consent of local governments, and that their consent would not be unreasonably withheld; and that if Mosaic does not come out with a monitoring plan within 180 days then the local governments should be empowered under this provision to develop a monitoring plan, or develop a monitoring plan now.

Attorney de la Parte reviewed the Substitute Standards slide reflected in the handout material and recommended language be added that says the consent of the local governments is required for alternative standards, but that such consent shall not be unreasonably withheld.

Attorney de la Parte reviewed the slide on Covenant Running With the Land and stated that the safest protection that you can have in terms of insuring that the obligations and covenants obtained under this agreement would automatically be enforceable is to record the obligations in the agreement, which also applies in the event of involuntary transfer; and pointed out that the obligations would be part of the chain of title.

Attorney de la Parte explained that Mosaic has expressed concern about the financial affect on its ability to finance in the future if we make this a recorded agreement, but pointed out that the 2003 Settlement Agreement with the Peace River/Manasota Regional Water Supply Authority (Authority) already states that it is a recorded agreement and that Mosaic succeeded to that agreement when it took over IMC and the merger took place.

Attorney de la Parte reviewed portions of paragraph 7 from the 2003 Settlement Agreement, which indicates that IMC shall record the agreement in the official records of the relevant jurisdictions to which Mosaic has the mineral rights or has the option to purchase unless the property has completed the reclamation process; and opined that the same provision should be in the current agreement.

Commissioner Moore inquired if there is no way to avoid recording. Attorney de la Parte said the best way to secure the covenants is by recording and commented on Mosaic's recommendation; indicted that the current phosphate compact does not give protection and assurances the county needs; and recommended that the parties return for additional negotiations, with a time limit being set.

Attorney Doug Manson commented on how the Authority was brought into the new settlement effort; opined that the 30 year duration is for the benefit of the county and the Authority; that Mosaic would most likely have its permits within 7 years; that the longer the duration of the agreement the more data we gain and the more ability to protect that the pre-conditioned water stays the same; and discussed the purpose of the agreement.

Attorney Manson said our standards are DEP rule criteria and Statute, and indicated if those standards are not high enough we lose; commented on the hearing process and stated that the process allows perfection of the application; and reviewed the Compact concepts per his slide presentation and handout material.

Attorney Manson indicated he would rather see the focus on rule making and legislation if a settlement cannot be reached; opined that we must define mining boundary on the southern end; and commented on misconceptions.

Attorney Manson opined that the \$25 million insurance under the Horse Creek Agreement goes to the Authority not the local governments and that it stays in place in addition to the \$50 million that is being pledged in this draft of the agreement. Attorney Manson stated that we are trying to protect and have the ability to assist with future water supply and protect your monitoring assessment program; that currently there is no monitoring or accountability or litigation process set out to make sure water quality and quantity is not being harmed; and that currently we must rely on a citizens enforcement suit.

Attorney Manson commented on the clay-settling areas and opined that the idea with this agreement is to take the standards and expand them. Attorney Manson stated that the idea of the injection well provision was that before Mosaic could do anything to dewater they must have the permit in hand, and that if it should say "construction and operation" permit, then "operation" should be added to make it absolutely clear. Attorney Manson opined that sections 5 and 6 are the crux of the agreement; and that the idea here is measuring water quality, quantity, timing, and accountability, with Mosaic bearing the costs of the program.

Attorney Manson commented on sections 7 and 11; and indicated that in section 20, Future Laws, that if a higher, stricter standard comes out by DEP and Mosaic has to go forward with that, it becomes a requirement of this agreement and is enforceable under the arbitration provision. Attorney Manson stated that it is hard to define what the enhancements would be in section 10; that a lot would depend upon DEP and its permitting; that currently it would be difficult to have DEP allow discharging a clay-settling area into a creek or river; and opined that we would need to come up with methods to do that, which we currently do not have. Attorney Manson advised it was his understanding that the 15,000 - 20,000 acre property is to be given to us and agreed it would be a good idea to clarify in the agreement that this is at no cost to the Authority.

Attorney Manson advised that in sections 13 and 14, End of Permit Challenges, everyone understands the concept that we would no longer be able to file permit challenges, but indicated that there needs to be more discussion on what kind of comments the staffs or the Board members collegiately acting as a Board can

make, short of challenging a permit or requesting a public hearing. Attorney Manson opined that no filing against Mosaic's permits and not having negative comments in the actual review process itself are critical elements to Mosaic. Attorney Manson pointed out there is no prohibition against seeking legislative or regulatory changes in the agreement itself; and opined that Release of Claims in section 15 can always be made tighter.

Attorney Manson opined that the arbitration process is pretty well set-out, but that you can always get tighter with arbitration provisions; and indicated that the process does take a while. **Commissioner Moore** requested comments on expert arbitration versus court arbitration. Attorney Manson commented on various possibilities and indicated it could be set up to go either way.

Commissioner Moore agreed that that the Authority was dedicated to this process and inquired if there are things that need to be cleaned up. Attorney Manson stated there are some things that need to be clarified.

Rich Mack, Senior Vice President and General Counsel of Mosaic Company, introduced Steve Penny, Dave Townsend and Tom Myers. Attorney Mack gave a slide presentation and provided some highlights of the Mosaic Company.

Attorney Mack explained that the Compact is not a demand by Mosaic but the result of rigorous negotiations based upon a proposed Compact that was presented to Mosaic by representatives of the County and Water Authority; that many of the items being criticized were originally proposed by County representatives in their original proposal to Mosaic; that the purpose of the agreement is to put a stop to the costly litigation by all parties; and that Mosaic wants to reach shared goals.

Attorney Mack commented on Charlotte County citizen expectations, Mosaic's entitlement to mine, benefits to the county, criticisms, and alternatives if the compact is not approved. Attorney Mack reported that none of the benefits are required of Mosaic today but are all voluntary negotiated principals that items Mosaic agreed to be put into an agreement.

Attorney Mack stated that the issue has always been on the quality and quantity of water in the Peace River Basin and Charlotte Harbor; that the concerns have been heard by Mosaic and Mosaic has committed to higher standards of environmental protection to safeguard those important resources; and commented on numerous new obligations that the Compact imposes on Mosaic to secure that protection.

Attorney Mack commented on future mining restrictions, the monitoring and stewardship program, and regular and open dialogue; and stated that Mosaic would be subjected to a variety of detailed stringent design and operating standards, as well as additional standards to protect wetlands and groundwater in deeper mining, which are more stringent than law requires.

Attorney Mack stated that the Compact provides for a better way to resolve disputes that arise in the future and would work together to achieve shared objectives. Attorney Mack advised that Mosaic has agreed to contribute valuable land free of charge for a future reservoir; that Mosaic has agreed to provide water to enhance minimum base flows into the Peace River Basin; that the Water Authority is supportive of this approach; and stated that this represents a major economic commitment by Mosaic that will produce valuable benefits to the county, its citizens and the Water Authority.

Attorney Mack commented on the 3 major criticisms that Mosaic is not agreeing to anything beyond its current obligations, that the Compact is not strong enough and more should be demanded of Mosaic, and that the Compact represents a complete surrender by the county of all of its legal rights.

Attorney Mack opined that the alternatives in contrast to the commitments and agreements to the current Compact that have been highlighted at this meeting are not very appealing; that the fundamental principal is that Mosaic cannot agree to ever more generous terms to impede its ability to conduct business operations economically and safely; indicated that Mosaic has negotiated many points, given up many benefits, and not seen a lot in return; and that Mosaic thought it had come to a negotiated resolution to the Compact when the exercise was concluded a few weeks ago. Attorney Mack pointed out that Mosaic has fiduciary duties to shareholders, farmers and employees, and

that if the idea is to reject the Compact and force Mosaic to make additional major concessions, which may not be realistic.

Attorney Mack said the essential question is what is best for the environment, the community, and for the taxpayers at large, this Compact, or none at all; indicated that some may not want to settle at all, but that others want to reach agreements; and requested that the Compact be judged on its merits and not preconceived notions or misleading statements. Attorney Mack pointed out there is no ongoing monitoring and stewardship program in place today, which Mosaic believes would be of immense value to the region.

RECESS: 7:16 PM - 7:25 PM

Commissioner Duffy asked why it is necessary to use the verbiage "significant adverse impacts", rather than just "adverse impacts." Attorney Mack explained that the general intent is that this is a long-term approach and we are looking for significant issues or material issues of concern or consequence before someone would pull us into an arbitration proceeding. Attorney Mack stated that some would suggest that you could read the word significant into just the phrase "adverse impact" and that if we collectively agreed that this is the philosophical agreement, Mosaic would likely be willing to entertain a request to remove the significant qualification and simply use "adverse impact", but would want a general understanding that this is the philosophy under which we are going to operate before doing so.

Commissioner D'Aprile opined that the parties were not that far apart; that he is not in favor of continuing with litigation; that some information such as the streams disappearing has just been brought out; and that he would like for the parties to get together again to see if the fine details and an amiable solution can be worked out.

Commissioner D'Aprile stated that perhaps some of the streams can be returned with new innovations; that the 30-year issue with no litigation initially concerned him, but now he better understands it; expressed concern with who would have the financial burden of supplying the water from the reservoir to Charlotte County, such as the pipelines; questioned if it was feasible to take advantage of the reservoir or build our own;

stated that no one wants damage to the waterways by mining or the effects of it, but accidents happen and are costly; that the mining industry must be fiscally responsible for the mining procedures; and that there must be guidelines for protection of the interest of Charlotte County and the estuaries.

Commissioner D'Aprile expressed concern that DEP, Army Corps of Engineers and other government offices have not protected the counties; stated that other counties who want to become involved in litigation should step up to the plate and put in their money; and indicated he is not willing to continue litigation if Charlotte County and Mosaic can come to an solution that protects Charlotte County.

Commissioner D'Aprile suggested that within the next two weeks the parties meet to address Attorney de la Parte's and Mosaic's concerns; and indicated he just wants to be certain that Charlotte County is protected.

Chairman Loftus clarified that **Commissioner D'Aprile's** recommendation is for further negotiations over the next two weeks, to include **Commissioners Duffy** and Staub and the team. Attorney Knowlton asked if Attorney de la Parte and our experts are to be involved in that process or go back to the team we had before. **Commissioner D'Aprile** stated he wants Attorney de la Parte and his team to be part of the process.

Commissioner Duffy requested direction that if as a Board it wants to move forward working on this agreement and come to a final document we can all live with, or continue litigating. **Chairman Loftus** opined that a motion is needed to accept the Compact in concept only, with it coming back in two weeks. **Commissioner D'Aprile** stated he does not want to litigate any further than is necessary and would like a settlement to be negotiated.

Commissioner Cummings opined that **Commissioner D'Aprile's** comments were not for approval of the contract but for the parties to continue working on it with the use of the experts. **Commissioner Duffy** requested direction from the Board to move forward toward an agreement or go back to litigation. **Commissioner D'Aprile** clarified that he does not to litigate; that he wants the parties to return to the table and continue

negotiations. **Commissioner Cummings** agreed that we need to go back to the negotiating table with the experts to address some serious problems; indicated he is hesitant to put two weeks on something that has been worked on this long; and expressed concern with potential Sunshine issues with any Commissioners being involved.

Mr. Townsend clarified that negotiations that took place with Commissioner Duffy present did not include our experts; that it included only representatives of the company and the three of us here. **Commissioner Cummings** commented on changes from the initial agreement; stated that unless there is a substantial reduction of what is reasonably expected to be mined there should be an EIS; and indicated he is willing for the negotiation team to go back to work, but that comprehensive resolution to the problem is what it has always been about. **Commissioner Cummings** inquired if it would be helpful to bring Attorney de la Parte back into the negotiations. Attorney Manson replied affirmatively. **Commissioner Cummings** stated he prefers there not be a two week time limitation.

Commissioner Moore inquired about Mosaic's viewpoint on an EIS. Attorney Mack expressed concern that discussions with the experts would primarily be about the same issues with some modifications, clarifications, and concerns in terms of how the provisions are drafted, but would not be a fundamental re-write; and opined that it would need to be done promptly. Mr. Townsend stated that Mosaic's position has always been that it does not object to the concept of an area wide EIS as long as it looks at all impacts, not just phosphate mining in the Peace River Basin, but questioned the need for an area wide EIS because of the EIS conducted and pending with the Army Corps of Engineers as part of the Ona permit review and the recent Peace River cumulative impact study.

Attorney de la Parte pointed out that the Ona EIS is not a true area wide EIS; that geographically it does not include the entire Peace River Basin; and indicated that an area wide EIS would come up with standards that would apply to mining within the entire area that is being studied by the area wide EIS. **Commissioner Moore** stated that the problem with the EIS studies is that phosphate mining is only one piece and he wants to know what agriculture and all of us are doing to the watershed.

Attorney de la Parte clarified that our position is that the area wide EIS should apply to all activities in the Peace River, not just the phosphate. **Commissioner Moore** said that everyone's efforts are worthy and appreciated; that there are a number of vague points; that we should move forward promptly but it should be done correctly; and encouraged Mosaic and Charlotte County to go back to negotiations to clean up the fine details.

Commissioner D'Aprile inquired if it is feasible to come to a conclusion in two weeks. Attorney de la Parte advised he would make it his top priority over the next couple weeks, but that he has a prior commitment for mid-November. Attorney Mack stated that he believes if a resolution can be reached it would be a prompt resolution; that they would commit to work through a two-week period, but believes the parties would be through the process within a 7 day period. Attorney de la Parte advised that during the development process he would be more comfortable seeking input from the Commissioners to be certain the language being put together is per the Board's concept. **Commissioner D'Aprile** requested that **Commissioner Duffy** pass along information to the other Board members as she receives it. **Commissioner Duffy** advised it would be helpful if a list of conflicts to be addressed was furnished.

COMMISSIONER D'APRILE MOVED TO APPROVE THAT THE MOSAIC AND CHARLOTTE COUNTY NEGOTIATING TEAMS, INCLUDING ALL EXPERTS, TAKE THE COMPACT THAT WAS ISSUED AND REVIEWED THIS EVENING, MEET OVER THE NEXT 2 WEEKS TO NEGOTIATE THE DIFFERENCES BETWEEN CHARLOTTE COUNTY AND MOSAIC INDUSTRY, AND BRING IT BACK TO THE BOARD, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

Commissioner Cummings pointed out that Lee County has spent \$2 million in this, has requested that we meet with them, and opined that we should do so. **Commissioner Moore** suggested meeting with them after we see where the negotiations go. **Commissioner Duffy** commented on her efforts to schedule meetings with Lee and Sarasota Counties; opined that this is our fight; that we need to be the leaders; and that it is our decision to make with input from Lee County and the Water Authority. **Commissioner Cummings** opined that when someone pays you \$2 million you give them the

courtesy of meeting with them; and clarified that the Water Authority has not taken a position on this agreement.

ADJOURNED: 8:05 PM

Signature on file in Commission Minutes
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

gm