

BOARD OF COUNTY COMMISSIONERS - ROUNDTABLE DISCUSSION

NOVEMBER 6, 2007

A 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, and Commissioner Moore. Also in attendance were County Administrator Loucks, County Attorney Knowlton, and Deputy Clerk Manley. The following members were absent: Commissioner D'Aprile.

The meeting was called to order at 9:00 AM followed by the Pledge of Allegiance.

C. Update by Commissioner Duffy on Phosphate

Commissioner Duffy explained her participation as Charlotte County's representative on negotiations with Mosaic and the other counties with the hope of developing an agreement on phosphate; stated that this is a status report only; and that an effort is being made to enter into an agreement rather than continue litigation.

Commissioner Duffy reported that there may be a later agreement with changes other than that which the Commissioners were given yesterday; that a great deal of progress has been made, but there are minor details yet to be worked out; and indicated that the details should be finalized by the next regular Commission meeting.

Commissioner Duffy commented on elements of change in the agreement since the last meeting in the clay settling areas, the addition of new streams depicting preservation areas, dewatering impacts to wetlands, cumulative monitoring and assessment program, 100 year flood plain protection, clarification that the \$50 million insurance policy for supplemental coverage of spills is not in lieu of Mosaic's requirements by law and that the local governments are the insured, no new chemical plant or gypsum stacks, clarification in the future water supply section that Mosaic will give the property to us for a reservoir, end of permit challenges, release of claims and a new tightening release provision, alternative

dispute resolutions, the need for an additional Environmental Impact Study (EIS) over the Ona EIS or analysis and if the Army Corps of Engineers would allow this, alternative dispute resolution process, a new provision insuring the impartiality of all arbitrators, the new 15-year term of the Compact, subject to renewal, except that the reservoir provision extends to 20 years.

Attorney Knowlton stated that the next regular Board meeting date of November 13, 2007 is too early and does not allow sufficient time for the public to speak; that she is looking at scheduling a special Board meeting the week of November 19-21, 2007; and pointed out that the public will be advised when the meeting occurs. Attorney Knowlton advised that changes are occurring quickly; inquired if she should continue giving each version to the Board members or wait until there is a final form; and indicated that because of the rapid changes, rather than post each version on the web page that only the chart that was submitted to the Board which talks about the concepts be posted. **Chairman Loftus** indicated that there should be an indication that this would be updated and is only a draft.

Commissioner Cummings opined that the changes should be posted since it has been out as public record, but with the caveat that this is a draft. Attorney Knowlton replied affirmatively.

Commissioner Moore agreed with not meeting too quickly and has no problem with November 27, 2007 or a special meeting; and indicated he is curious of the Board's opinion on a format when this issue comes to closure.

Commissioner Cummings opined that this is an issue which the community has vested many millions of dollars; that we are trying to protect a resource that generates in excess of a billion dollars in income annually; and that we need to be certain we are very knowledgeable when making a decision; stated that Lee County has contributed around \$2 million and requested a meeting, which should be given; and indicated that there are significant issues yet to be addressed.

Commissioner Cummings stated that it was put out in the newspapers that the Ona EIS would basically do the same as an area wide or regional EIS (AEIS); indicated that the Army Corps of Engineers has issues with the Ona EIS draft and it does not

have their seal of approval; stated that an AEIS is vastly different; and expressed concern that an AEIS is not part of this.

Commissioner Cummings commented on land where the existing reservoir is being built that would accommodate another reservoir, and questioned the value of mined land versus building another reservoir on the existing site.

Commissioner Cummings indicated that filling the holes is a big deal and he does not see that being addressed; that any effective settlement must include an EIS and an effective resource management plan; that there has been no agreement to recording the document; and that he is pleased to see some of the improvements being made, but does not believe we are there yet.

Commissioner Cummings stated that he is not in that big of a hurry; that the urgency is on Mosaic's side because of the demand for their production; that if we bide our time we might get the concessions we want; and that we should give Lee County time to weigh in.

Commissioner Duffy agreed a special meeting would be a good idea; that it may not be necessary to have all the players here at that time; and indicated that she has had most of her questions answered.

Chairman Loftus asked if there were questions for Attorney de la Parte. **Commissioner Moore** said he had no questions for Attorney de la Parte, but indicated that **Commissioner Cummings** mentioned Lee County wanted a meeting; that his understanding is that Lee County would be briefed and ready to take a stand on the issue in early December; that there is a logistics problem in that possibly by November 27, 2007 or earlier the Charlotte County Board of County Commissioners will have made some form of decision, but that Lee County would not be ready to meet.

Chairman Loftus explained that we are trying to expedite and move forward on this to protect our watershed, the Peace and Myakka Rivers, and tributaries; and opined that we need to move forward on it by November 27th at the latest.

Commissioner Duffy advised that efforts were made to meet with Lee County, but were unsuccessful; indicated that it is not necessary for us to have a big meeting; that Charlotte County has been the leader in this fight; and it is our responsibility to let the other counties know how we feel about it.

Attorney de la Parte advised he and Attorney Manson would appear before the Lee County Commission this afternoon to give a briefing on the contract documents; that his appearance in no way is intended to represent the Board's position regarding a joint meeting, but that the question might arise and he would convey any position that the Board decided upon today; and pointed out that the way the contract currently is written the agreement would not go into effect until Lee County approves it, and Mosaic would not approve the agreement until all four governments have approved it.

Attorney Knowlton advised that two requests have been received through the Lee County Attorney's office; suggested that because of scheduling difficulties of having a meeting with all three counties, perhaps an offer could be given to Lee County for a bi-county meeting; and indicated that a response should be given one way or the other. Attorney de la Parte pointed out that this agreement would not go into effect without Lee County's approval, and expressed concern that he has something to convey to Lee County.

Chairman Loftus stated that there is more than just a scheduling issue; commented on efforts to include Lee County in previous meetings; and indicated that we have tried to accommodate, but Lee County has not made the same effort. Attorney de la Parte pointed out that he is not being critical of any decisions, only pointing out what the current contract says.

Commissioner Moore stated that he had inquired what happens if Charlotte County and the Water Authority sign the agreement but one or two counties do not; that Attorney Mack had explained that is not what was intended, but that Mosaic at that time could either sign the agreement or not; indicated that there is a good chance that one or more of the four would not sign; and opined that if all but Lee County signed the agreement that Mosaic would sign as well.

Commissioner Duffy agreed that if one of the three counties do not join the agreement that Mosaic would probably go forward without the agreement of that county; explained that at the sessions all of the attorneys brought forward the concerns of their respective Commissioners and those concerns were reviewed and addressed; that there has been good representation for all parties; and she does not see where a tri-county meeting would accomplish anything.

Commissioner Cummings opined that Sarasota thinks there is a lot of work yet to be done on this agreement, not just tweaking and that if Sarasota does not join in there is a real issue as to whether the Authority would. **Commissioner Cummings** stated that we do not gain anything by rushing through this, but Mosaic does; and that trying to rush this through and not bring your coalition in and have your advisors there every step of the way is not good; and suggested putting ourselves in Lee County's position of having invested \$2 million and then being told we are moving forward without their involvement.

Commissioner Moore stated that it has been over a month and there have been opportunities, and suggested that **Commissioner Cummings** reach out to the parties. **Chairman Loftus** stated that we have reached out to them, that he has emphasized the importance of involvement by all counties, and opined that sometimes you must just go forward.

Commissioner Duffy indicated that we have done far more than tweak the contract; that this has been going on for months and is not being rushed; that this is a good flow of information and an excellent process with major benefits; and that our experts, hydrologists, scientists, and many others have been at these meetings.

Chairman Loftus indicated a meeting would be set as suggested by Attorney Knowlton based upon scheduling availability, with the experts to attend that meeting. **Commissioner Moore** requested allowing Attorney Knowlton some leeway for advertising, etc. Attorney Knowlton indicated that this would be scheduled in November as a special meeting or at a Board meeting. **Commissioner Cummings** pointed out there are still more negotiations to follow and opined that the message we telegraph to the public of how urgent we are trying to get a settlement

puts us at a disadvantage and indicated the goal is to do what is in the best public interest.

Commissioner Cummings opined that it puts the negotiating team at a tactical disadvantage when they go into the room and the goal appears to be to settle rather than achieve what is in the public interest through whatever means is most effective. **Chairman Loftus** stated that the goal is to protect the public interest and that we do not have to settle if we do not agree with the agreement.

Commissioner Duffy stated that her understanding of the direction of this commission was to work on this agreement and move forward; that we have a choice of continuing to work toward finalizing the agreement or return to litigation and she does not believe the citizens want to continue litigation. **Commissioner Duffy** opined that the citizens want an agreement that is the absolute best we can get that protects us and believes the goal is to settle, assuming we get the protection we want. **Commissioner Duffy** commented on Mosaic recording the covenant to the land. Attorney de la Parte stated that recordation is important and commented on issues regarding voluntary and involuntary transfers.

Attorney de la Parte stated that recordation is important, commented on issues regarding voluntary and involuntary transfers, indicated that a conference call is scheduled for Friday, November 9, 2007, that the negotiating team is still working up a last list of issues, that recordation is at the top of the list, and that the negotiating team will work at resolving these last issues.

Commissioner Moore stated that either side can walk away from this; that this could be a historic opportunity; and that it would be sinful and risky for either party to blow this opportunity.

Commissioner Cummings opined that the assumption that the public wants this settled is not accurate and that the evidence supports that. **Commissioner Duffy** advised that many she has spoken to from the same organizations speak differently than those to whom **Commissioner Cummings** spoke to.

Commissioner Duffy explained that she will take back to the negotiating table any concerns the Board has. **Commissioner Cummings** commented on several issues of concern, including recording of the land, having a regional EIS, an effective natural resource management plan with Charlotte County's participation in both, and the ability to participate in the permit review process.

Attorney de la Parte confirmed that mining can still go forward based upon structuring during the regional EIS process and **Commissioner Cummings** commented on an approach looked at in the past.

RECESS: 10:05 AM - 10:20 AM

Commissioner Cummings read into the record a portion from the Charlotte Assembly 2007 policy statement.

A. Budget Policy Review Process

Mr. Loucks introduced Dr. Herb Marlow; stated that this summer we went through a difficult budget process; that no one had time to go through discussions; that now we need to back up and create a foundation for making future budgets; and commented more in detail what that means.

Dr. Marlow stated that this is a challenging time for local and county governments and the pressure is expected to continue for some time; and that many local governments are engaged in planning exercises to prepare for a long-term, not just the interim period.

Dr. Marlow indicated there are two critical approaches in this process; how can we do the current work more effectively, productively and efficiently, which is primarily a staff job; and what work do we need to do, want to do, and should do, which is policy and for the Board of County Commissioners (Board).

Dr. Marlow commented on the process using both approaches; indicated there needs to be some time of orientation; programs must be looked at to determine which are of the highest priorities; stated there is a lot of movement in the utility world to convert waste energy and that every department needs to

look at what is a waste product and make it of some economic value so you do not have to reduce services to the public.

Dr. Marlow stated that items must be looked at every year in the County-wide policy workshops to determine what can be done more efficiently and waste cut; and encouraged the use of citizen review.

Dr. Marlow advised that the ultimate goal is to give as full and complete a picture as possible of what the choices are, of how business can be done differently, of what the community sees as priorities, and what staff sees as issues so the Board can make the best decisions possible. Dr. Marlow explained that this is a big budget and the funding sources are complex; that it will take time and there is no way for it to be done in one meeting; but that everything must be reviewed.

Dr. Marlow stated that if the process is started in November or December 2007 it should be completed in April or May 2008.

Commissioner Duffy asked if the conclusion has ever been that the answer is privatization for certain services. Dr. Marlow replied affirmatively; indicated that as a result of some of his work the bidding process for privatization, or "contracted out services", has improved significantly and is one area that could be looked at; and commented some that have worked well.

Commissioner Moore commented on the non-profit budgeting cycle; and indicated that every now and again one must start from scratch, but it is not a favorite thing to do.

Dr. Marlow said it appears every ten or fifteen years local governments must go back and review and opined that the process is good. Mr. Loucks pointed out that this does more than help us through the budgetary process; that it creates a foundation for a five-year strategic plan by determining what your services are, what the core mission is, what the community needs, and what will help the community grow, and focuses on issues that are vital to the community as we move into the future.

Commissioner Cummings commented on the many variables that can be thrown into the mix when getting into this process; indicated that at some point you must make assumptions as to what gains you

receive by increasing efficiencies; and in order to have a financial framework for when you begin making decisions, you must look at what you need to do to even do core operations.

Commissioner Cummings stated the needs will always outstrip the money, so that fact combined with the belief that there is a huge gain of efficiency out there makes it difficult; that if we are going through this process we must make a decision in broad terms what the total revenue will be and what the expense will be; indicated that he is inclined to look at cost of provision of services historically over time, float that in as an expense, and make value decisions of what you do or do not want to do based on trend line.

Dr. Marlow said he talks about two approaches and that it is a parallel process for the reasons **Commissioner Cummings** described. **Commissioner Cummings** opined that we need to identify a cross-section of the customers with each of these different functions and go out to those customers and try to balance their priority or how intense is the need with the number of people being served.

Commissioner Cummings stated that the outreach cannot be passive; that he likes some of the things he sees with the test groups but does not know what the multi-dimensional rating is; and opined that there are some assumptions that would have to be made.

Chairman Loftus agreed with **Commissioner Moore's** analysis that it is a cleansing process and efficiencies must be looked at wherever possible; indicated that he likes the process; and that he would like to move forward as soon as possible.

Commissioner Moore stated he is not happy with the budget cycle this year, which lacked decisiveness; that it was poorly done; and that this process should help produce better results.

B. Implementation of the Green Building Ordinance

Jim Evetts advised that Building Construction Services was directed to set up a committee to work with local contractors and developers to create an ordinance to encourage the use of green building techniques in the county; indicated that direction to

the committee was to base the ordinance on Sarasota County, but make a more innovative look at incentives; and stated that the presentation looks at areas that need clarification as to what direction the Board wants to proceed.

Mr. Evetts explained that green buildings have a great benefit in the future, pays for itself back over a twenty or thirty year lifespan, but are more costly initially; and provided a slide presentation based upon the handout material in the Board packet.

Mr. Evetts opined we need to set the initiative and commented on green buildings in Charlotte County.

Mr. Evetts stated that one of the points in Babcock Ranch is that green would be brought into that area; and indicated that Lakewood Ranch Headquarters is the first Florida Green Building Coalition (FGBC) Certified Commercial Building.

Commissioner Cummings pointed out that a couple of the projects mentioned are School Board projects; and requested clarification that whatever decisions we make the School Board could choose to either adopt or not, but that we cannot mandate a standard on the School Board. Mr. Evetts replied affirmatively. **Chairman Loftus** stated the School Board was the first in the county to go green and he is pleased they chose to do so. **Commissioner Cummings** agreed and stated he was only clarifying what the implications were of the Board adopting it as part of the building code. Mr. Evetts stated it would not affect the School Board.

Mr. Evetts reported that on July 13, 2007 the Governor of Florida signed Executive Order 07-126, which mandated several actions to improve the climate performance of state government facilities; that one of the actions was to implement the United States Green Building Council's Leadership in Energy and Environmental Design for both new and existing buildings; indicated that the committee requests direction from the Board that Charlotte County should follow as far as the design and operation of our buildings in the same sense; pointed out that the Sports Park renovation is being done to green standards and will be certified by Leadership in Energy and Environmental Design (LEED) and that local schools have been built to green standards; indicated that the county leads by example; that green building makes sense and is better

for all of us; that the main issue is how to get people started doing this and that once started it becomes habit; commented on factors influencing the decision to be green, suggested inclusions to the ordinance, and incentives.

Mr. Evetts advised that the committee recommends that as long as a building obtains certification from any one of the three nationally recognized Green Building certification programs (LEED, Florida Green Building Coalition, or ICC Green Building Standards) buildings would be accepted by Charlotte County as being green.

Mr. Evetts reviewed the benefits of building green; indicated that the question is what incentives can be given to encourage building green; reviewed costs and savings associated with green buildings; and stated that history shows if certain things are required costs comes down because competition comes in.

Mr. Evetts reviewed incentives that can be given per the handout material; commented on offering inspectors on site; indicated that we cannot give cuts in property taxes and commented on possible refunds; questioned who would be eligible for incentives; and advised that more direction is needed from the Board.

Commissioner Duffy acknowledged that Charlotte County's reclaimed water system is being expanded throughout the county and inquired how reclaimed water would be handled in areas where it is not available. Mr. Evetts reported that some communities require developers to lay the reclaim water lines at the same time as the water lines and use reclaimed water for irrigation. Mr. Loucks explained that currently our reclaimed water program benefits developments for common areas such as golf courses, but not any residential areas; that two Municipal Service Benefit Units (MSBUs) were created in West County and getting reclaimed water to the sewer and water projects was costed out, but it was not approved due to cost.

Commissioner Duffy asked what Mr. Evetts thought about the use of cisterns. Mr. Evetts stated that there has not been much research on the use of cisterns; that cisterns could be a problem because they require many gallons, the lots are small, and the

houses are growing; commented on other difficulties; indicated that cisterns are green, and in some instances are doable.

Commissioner Duffy asked if Mr. Evetts was familiar with styrofoam reinforced concrete construction. Mr. Evetts explained various ways of this being done; indicated that it is green; that the polystyrene insulation is recyclable and does not necessarily limit you to any certain kind of construction; and commented on cost factors. Commissioner Duffy stated that she brought this up because she understands that it is cost effective in terms of energy conservation, but also safe for hurricanes. Mr. Evetts agreed; stated that this is a step where an incentive could be given; and pointed out that concrete is recyclable but the cost continues to increase.

Commissioner Duffy commented on funding; that the Building Department could not sustain a loss of revenue if reduced permit fees was given; and that the Building Department was asking the Board for other ways to finance those discounts. Mr. Evetts explained that building permit fees are a cost only because State law does not allow Building Construction Services to make a profit; and pointed out that it would be very difficult for the Building Construction Services Department to afford a cut. **Commissioner Duffy** commented on Sarasota County allocating a maximum of \$50,000 per year on building permit refunds. Mr. Evetts commented further on the manner in which Sarasota County is handling building permit refunds.

Commissioner Cummings stated that some of the mobile home parks have reclaimed water available in residential, but that there is a problem in creating sufficient storage for distribution.

Commissioner Cummings stated that he did not see any particular mention about broader requirements for stemwall constructions and reducing the grade requirements for the yard, basically allowing the yard to flood on occasions.

Mr. Evetts stated that issue was addressed in the FEMA Ordinance with a 1' maximum and that all water had to be maintained on site; commented on disagreements that occurred, and how those requirements were arrived at; indicated that there was an agreement to work with developers on large acreage lots, but water must be maintained on those sites. Mr. Evetts pointed out

that drainage in Charlotte County is a major problem and that he does not know if anyone has looked at that in the green ordinance line.

Commissioner Cummings opined that stemwall is a superior method and should be encouraged; commented on incentives; and stated that he has mixed feelings as to how far he would go to the General Fund.

Commissioner Cummings commented on impact fees and utility hookups and looking at a process where reduction is based on actual experience; must look at changes that might get made later down the line; and include a caveat for at least a period of years based upon the assumption of savings for what reductions were given at time of construction.

Commissioner Cummings opined another area to be looked at is tiered impact fees, which would be based upon location; that the most green thing you could do is exercise good growth management; and that the Urban Service Area is presently in two zones, Infill and Suburban, and should be in four zones, Infill, Transition, Suburban, different than what we have now, and Reserve Areas.

Chairman Loftus stated that he is strong on green buildings, believes in saving our environment, and believes as a government we should show that as well; commented on the reductions of energy in the various county buildings; and asked the Board's opinion of joining the initial initiative group that is forming a climate communities group in Washington, D.C. at a cost of \$8,000 per year; and opined that some great benefits could be gained.

Commissioner Moore stated he does not know enough about it to make a determination but is inclined to keep the \$8,000. **Chairman Loftus** said he believes it would be beneficial. **Commissioner Cummings** said a decision could not be made today, but he would be inclined to support it. **Chairman Loftus** pointed out this is just being mentioned and that if there is a consensus he would bring it forward at a regular meeting. Mr. Loucks stated that this is a newly formed coalition. **Chairman Loftus** advised that we are also working to see if we can receive funding through the state level.

Commissioner Moore stated that we should never be so busy that we do not apply for grants and things that will help in our community, but indicated that there are no free lunches.

Mr. Evetts said the committee needs to know what kind of incentives, if any, should be offered. **Commissioner Cummings** opined that the larger dollar items to look at are impact fees and utility hookup fees, and should be reflective of reality and savings generated for the community.

Commissioner Duffy requested that the committee give the Board recommendations on incentives to review. Mr. Loucks stated that options will be brought back for the Board's review.

Commissioner Duffy applauded Kelly Shoemaker, Andrew Baker and Chairman Loftus for their conservation efforts; indicated that there was a \$1.2 million dollar reduction by the School Board this year in energy conservation; and stated she believes we can do the same.

ADJOURNED 11:45 AM

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