
CAPE CORAL CITY COUNCIL

IN RE:

MATLACHA CIVIC ASSOCIATION,

Plaintiff,

vs.

CASE NO. 18-006752

CITY OF CAPE CORAL and DEP,

Defendants.

/

TRANSCRIPT OF EXECUTIVE SESSION

DATE TAKEN: January 13, 2020

TIME: 3:08 p.m. to 4:12 p.m.

PLACE TAKEN: Cape Coral City Council, Council
Chambers
1015 Cultural Park Boulevard
Cape Coral, Florida

REPORTER: Jackie D. Burrell, RMR, RPR, FPR
Notary Public, State of Florida
at Large

CERTIFIED
COPY

FORT MYERS COURT REPORTING, LLC
Registered Professional Reporters
2180 West First Street, Suite 120
Fort Myers, Florida 33901
PHONE: (239) 334-1411 FAX: (239) 334-1476

APPEARANCES:

CAPE CORAL CITY COUNCIL:

Joe Coviello, Mayor
John Gunter, councilmember
John M. Carioscia, Sr., councilmember
Marilyn Stout, councilmember
Lois Welsh, councilmember
Richard Williams, councilmember
Jessica Cosden, councilmember

ATTORNEYS:

CAPE CORAL CITY ATTORNEY'S OFFICE
Post Office Box 150027
Cape Coral, Florida 33915

By: Dolores Menendez, Esquire
Steven D. Griffin, Esquire

and

MANSON BOLVES DONALDSON VARN
106 East College Avenue, Suite 820
Tallahassee, Florida 32301-7740
Cvarn@mansonbolves.com

By: Craig D. Varn, Esquire

Also present: John Szerlag, City Manager

1 MAYOR COVIELLO: Okay. Welcome to the special
2 meeting of the city council, January 13th, 2020.
3 This meeting will now come to order. Please stand
4 for a moment of silence on the invocation.

5 Thank you.

6 Please remain standing for the pledge of
7 allegiance.

8 (Pledge of allegiance recited.)

9 MAYOR COVIELLO: Thank you. Please be seated.

10 Madam City Clerk, will you call the roll.

11 THE CLERK: Yes, Your Honor. Before I call
12 roll, I'd like to announce that Councilmember
13 Nelson has asked to be excused, and I will mark her
14 so. And Councilmember Carioscia has indicated that
15 he is coming but he will be here after roll call.

16 MAYOR COVIELLO: Okay.

17 THE CLERK: Mayor Coviello.

18 MAYOR COVIELLO: Here.

19 THE CLERK: Councilmember Cosden.

20 COUNCILMEMBER COSDEN: Here.

21 THE CLERK: Gunter.

22 COUNCILMEMBER GUNTER: Here.

23 THE CLERK: Stout.

24 COUNCILMEMBER STOUT: Here.

25 THE CLERK: Welsh.

1 COUNCILMEMBER WELSH: Here.

2 THE CLERK: Williams.

3 COUNCILMEMBER WILLIAMS: Here.

4 THE CLERK: Six present, two excused.

5 MAYOR COVIELLO: Thank you. Council will be
6 conducting a closed attorney/client session
7 pursuant to Section 286.0118, Florida Statutes.
8 The estimated length of the meeting is one hour,
9 and the persons attending are Councilmembers
10 Gunter, Carioscia, Stout, Welsh, Williams and
11 Cosden, Mayor Coviello; City Manager John Szerlag;
12 City Attorney Delores Menendez; Assistant City
13 Attorney Steve Griffin, and Attorney Craig Varn.
14 Also in attendance will be a court reporter from
15 Fort Myers Court Reporting.

16 Let's go to closed session.

17 (The following proceedings occurred in a
18 closed attorney/client session.)

19 MAYOR COVIELLO: Thank you. So we're here to
20 talk about litigation strategy in the case of the
21 Matlacha Civic Association vs. City of Cape Coral
22 and the DEP, Case Number 18-6752 related to the
23 Chiquita Lock.

24 MS. MENENDEZ: Mayor and Council, as you are
25 aware, there was recently a recommended order by

1 the DOAH administrative law judge that was against
2 the permit to remove the lock. Mr. Varn is here,
3 Craig Varn is here - he was the attorney who
4 handled the administrative hearing below - to
5 update you on where we are now and what
6 alternatives may be available to the council at
7 this juncture. And with that I'll turn it over to
8 Craig.

9 MR. VARN: Hello. So, yes, we got the
10 unfavorable recommended order. I'm sure you were
11 disappointed, as was I. I can blame it on a lot of
12 people, but the bottom line falls with me. I --
13 you know, I should have done things differently,
14 but the bottom line, we are where we are, so we'll
15 start there.

16 We have a few options moving forward. We're
17 in a posture now where we've done everything
18 related to the underlying case. There's no more
19 filings to be had. The only question now is what
20 DEP is going to do with it. I think they're going
21 to give a pretty good review of it. They're
22 required to, and I do think they will do it.
23 They'll look at a lot of things we said, but
24 there's just so much there, I'm not comfortable
25 suggesting that the department will change the

1 final decision. And there's some specifics in
2 there, but given where we still are and what you
3 may go forward with, I'd rather not get into all
4 what I think. A lot of it is in writing. We did
5 distribute a lot of the stuff, you know, our
6 critique regarding it. And one thing I'll point
7 out, you got a response that Mr. Hannon provided
8 you in which he suggested that we had done
9 something wrong by critiquing the administrative
10 law judge's order.

11 You know, my position on that is it again
12 shows his misunderstanding of the way it's supposed
13 to work in these proceedings. That's what we're
14 required to do if we don't want to lose the ability
15 to raise those issues on appeal. So had we not
16 pointed out all these issues we would have lost
17 them for good, so that's why we do what we do. But
18 anyway, back to where -- what we go forward -- now
19 we have about 60 days still remaining on the clock
20 before the Department is required to issue
21 something, but it, as with most of the statutory
22 deadlines, are just deadlines with no penalties.
23 So it is quite possible that they could take
24 longer, so I don't know what's going to happen on
25 that and I don't control that and I don't know if

1 there's any one person other than the secretary of
2 the department that controls that.

3 So, but looking forward, at some point we need
4 to make a decision on what you want to do, and my
5 memo that I sent out assumes you do want to move
6 forward with removal, which that's something you
7 obviously have to decide amongst yourselves, but
8 assuming that to be the case, you have essentially
9 three options, two of which are fairly similar,
10 just with a little bit of a twist thrown.

11 The first is the appeal, and I'll be quite
12 blunt, I wouldn't recommend wasting your time or
13 money on that one simply because I think at best we
14 would get back to where we are today with a new
15 hearing, and we can do a new hearing anyway if we
16 just modify the application, which if we came back
17 on appeal I would tell you we needed to do anyway
18 just to touch on some of the issues.

19 While I don't agree with a lot of the things
20 the judge did, the fact that she pointed them out I
21 would address them anyway, whether or not I agree
22 with them, just because I wouldn't want to go
23 through that again.

24 So moving on to the other options, would be --
25 again, assuming you want the lock removed and you

1 need to get the permit, you could apply -- well,
2 you would need to apply for a modification or a new
3 application depending on when you do it and how you
4 do it, but it's the same process. You supplement
5 new information, and to get there what I think we
6 would need to do is hire an ecologist because
7 that's the one area where we were missing in our
8 presentation. We didn't have our own ecologist to
9 address theirs, and I still don't think they proved
10 anything, but obviously the judge disagreed with
11 me, so that's where we are. And so what I would
12 recommend, if you want to go forward, regardless of
13 which process you pursue and who does it, frankly,
14 you know, obviously I don't have to be involved in
15 this, you could tell me to take a hike, but I think
16 you need to hire an outside ecologist day one to go
17 out and analyze, make their determinations based
18 upon what's going to happen. And then I think to
19 address the worst case scenario you need an
20 ecologist to go look at what they said is going to
21 happen. And based upon that determination you can
22 come up with what's called mitigation to address
23 those impacts.

24 The City has already taken some very strong
25 steps -- let me go back. One thing that drives me

1 nuts about this case is how far advanced the City
2 is in terms of environmental action, and so for
3 them to come in and suggest that you're not is
4 absolutely ludicrous. In fact, you know, me being
5 an attorney, I think I would tell you stop doing
6 all this because you're ahead of yourself and
7 nobody -- you're taking on the work of what others
8 should be doing on your own, which is a very good
9 thing to do in terms of, you know, benefiting the
10 public. I'm just not a benefit-the-public kind of
11 person, so that's me personally. But what you're
12 doing is absolutely amazing, so for them to suggest
13 otherwise is ludicrous, and you should all take
14 that home and feel good about that. But bottom
15 line is we are where we are, and so you're already
16 doing some things that we would incorporate into a
17 permit modification. For example, your agreement
18 with Fort Myers, that's going to take a load out of
19 the river, which you guys are the ones that took
20 that on. I mean, that's a significant issue for
21 cleaning up the river.

22 There's other things you're probably doing
23 that I'm not aware of, but those things you would
24 incorporate in and get credits for those.

25 Beyond that, whatever the ecologist said would

1 be the worst case, I would propose you go out and
2 look at other mitigation proposals. You can buy
3 mitigation credits. Those are about 125,000 to
4 \$150,000 an acre. Yeah, they're not cheap, but,
5 you know, if you look at all of this, the impacts,
6 my rough guesstimate, you'd have to look at -- have
7 the ecologist to really decide, but you're looking
8 at probably in the five to ten acres, worst case.

9 So we're talking about if you really want to
10 do this, you want to cover all your bases, and the
11 amendment, whether or not you withdraw the
12 application or you simply accept what goes forward
13 from DEP and start over, either way, same, I
14 recommend you do this. You're looking at a price
15 tag of, you know, \$1.5 million, just to be sure.
16 And so then that's the option of just going in
17 today and starting over, just let the case run its
18 course.

19 The other -- do you want me to stop?

20 COUNCILMEMBER STOUT: I was going to ask a
21 question. Would you rather me wait until the end?

22 MR. VARN: I have no preference.

23 COUNCILMEMBER STOUT: Mr. Mayor?

24 MAYOR COVIELLO: Councilmember Stout, go
25 ahead.

1 COUNCILMEMBER STOUT: I'm just wondering with
2 all that we have done, such as the agreement with
3 Fort Myers for them no longer dumping wastewater
4 into the Caloosahatchee, that's one. Another is we
5 prevented North Fort Myers from injecting a well,
6 and instead we're taking their wastewater.

7 MR. VARN: Uh-huh.

8 COUNCILMEMBER STOUT: And then the third
9 thing, as I remember, is a -- I think it's a borrow
10 pit in Charlotte County that's bringing water down.

11 MR. VARN: Uh-huh.

12 COUNCILMEMBER STOUT: Do these things that
13 we've already done, would they count?

14 MR. VARN: No. And that's -- and that's, to
15 be fair, where we got into a little bit of trouble
16 early on in this case, and that's what I think
17 really probably is the biggest factor that stung us.
18 is that DEP, when we first did the permit, was
19 giving you credit for projects that had occurred
20 15 years ago. And I looked at it and said you
21 can't do that. I mean, that's -- absolutely no
22 way. And then their counsel got ahold of it and
23 agreed and said you can't do that, so we modified.
24 That has now clearly come back to bite us in the
25 rear. I think improperly so, but nevertheless it

1 has. The judge harped on that a little bit.

2 MAYOR COVIELLO: Councilmember Williams,
3 you've got something?

4 COUNCILMEMBER WILLIAMS: Yeah, I do.

5 As far as the ecologist, Janicki
6 Environmental, I think they're part of it, don't
7 they -- can't they fill that role?

8 MR. VARN: No, they're more of a water mover.
9 They calculate velocities. An ecologist would be
10 looking at the plants and the species, and that's,
11 again, one of the problems is Tony did form
12 opinions, but that's not his expertise. You want a
13 person who focused on the biota, the fish, the
14 birds, the little creatures, all of that; and
15 that's where they had -- they had two different --
16 they had -- well, technically both of their guys
17 were ecologists, however, they only offered one as
18 a water quality expert. And so even though he
19 testified -- he was the one that gave -- I can
20 critique this all day. If you read my stuff,
21 you'll understand where I think there was errors.

22 But, no, Tony does not have the expertise that
23 I would think you would want, and he doesn't do the
24 UMAM analysis which you would need to do because
25 that's what the department uses in calculating how

1 much offsets.

2 What you do is you go and look at what are
3 these services, what are these -- we look at an
4 acre. What services does this acre provide, and
5 you assign it numbers, and they add up to maybe an
6 eight. And then you go in and do your development
7 and it brings the property down to a six, so you've
8 got to make up the three (sic), and that can be
9 equated to in a pristine mitigation bank as a ten,
10 so you only need three. You can do -- it's a
11 mathematical equation at that point, but that's
12 what I think needs to be done on this.

13 Again, I think you're going to have -- I mean,
14 I think Tony was right. I don't think there's
15 going to be any impacts from this. I think it's
16 ludicrous, but that's where we are.

17 So in order to prepare for the second round,
18 it would be silly not to go in and be prepared to
19 address that issue. Again, I would argue all day
20 that it's not going to have any impacts. I'm
21 absolutely comfortable with that, but obviously
22 certain people don't agree with me, and the one
23 important one that didn't agree with me was the
24 judge. So that's where we are.

25 MS. MENENDEZ: Well, let's just break that

1 down for a minute because I think you have four
2 courses of action potentially available to you.
3 One is, and it's the one we'll circle back to is
4 to, as Craig has said, the recommended order will
5 probably be turning into a final order, and so one
6 of your options is to just -- let's assume that
7 happens and you abide by it, which means you leave
8 the lock where it is and you will be able to
9 explore a little bit, tangentially here what that
10 might be for you in terms of dollars and cents so
11 that you can compare that to the cost that you
12 might be facing to take an alternative route.

13 Okay. Another one is the appeal. Wait for
14 the final order to come in against you, and appeal,
15 which Craig has already said he does not recommend
16 because he doesn't think you're going to get any
17 real benefit from the money that you're going to be
18 spending to do that because ultimately you will
19 most likely be remanded back down again in this
20 case.

21 So that's why he's emphasizing one of the
22 other two routes. One is to file a new
23 application, and the other is to seek to withdraw
24 the current application and file an amended
25 application, which -- please feel free to describe

1 for them the differences, but that's where you're
2 going. And a minute ago you said 1.2 million; is
3 that what you said?

4 MR. VARN: No, I'd say 1.5.

5 MS. MENENDEZ: 1.5. And that 1.5, is that for
6 the -- any kind of physical work that would have to
7 be done and the experts, or does that include your
8 attorney's fees?

9 MR. VARN: Yeah, that would include the
10 hearing process, so hiring of experts, at least
11 one, possibly two. The ecologist is the primary.
12 Absolutely you have to have an ecologist.

13 That would include their time. You know, we'd
14 have to have everybody go through all this again,
15 depositions. This time you depose all of their
16 little people on standing -- not little. I mean,
17 you'd have to go through that. Normally you don't
18 waste time on that, but in this case, given what we
19 know through all that. So, yes, it would -- and
20 what I think would be the reasonable amount for
21 mitigation. It could be less. I mean, I could be
22 way off on my numbers. I'm just saying -- I'm
23 guesstimating given -- I mean, it's a fairly long
24 -- the canal is fairly long. If you assume impacts
25 like occurred on the north spreader, which we don't

1 think had anything to do with removal of the lock,
2 but, again, I'm trying to think our worst case
3 scenario, just adding that up that's a significant
4 amount of acreage, so you apply that. So ten acres
5 at figure one point -- or \$125,000 an acre, give or
6 take, that's 1.25. I think the rest would be
7 attorney's fees and experts, so I'm at 1.5.

8 I mean, on the upside, you've spent 50 so far,
9 and I can honestly tell you we've incurred 110 plus
10 in fees, so as much as it hurt you, I can guarantee
11 you it hurt me pretty significantly, but we're
12 there, so we've got that somewhat going for us,
13 what we incurred, but I can guarantee you a lot of
14 that is going to be reincurred because it was fees
15 for depositions that need to be redone because they
16 can change their opinions. I mean, there's a lot
17 going into that. So I'm just trying to give you
18 rough ideas of what it's going to cost to go
19 forward.

20 Clarification on one thing. Yeah, you can --
21 with respect to letting DEP go forward you can do
22 that for two different things. One, you do nothing
23 -- well, actually three because you do nothing,
24 just let it go. If you choose to appeal, you'd
25 have to let DEP. The third is if -- even if you

1 want to amend or file a new application you can
2 still let DEP go forward. The nuance in that
3 option and the option of withdrawing your current
4 application and amending it and re-filing is that
5 to the extent that there's any argument by the
6 petitioners that somehow those findings are held
7 against us going forward, it takes -- it would take
8 away that argument.

9 You'd have to change -- do a significant
10 number of changes so it won't have a super
11 significant impact on moving forward, but there are
12 a couple minor issues that kind of cause me some
13 grief that, again, I don't think are relevant and I
14 have to wait to see what DEP comes out with to say
15 whether or not they just flat out say, no, that's
16 not an issue or they accept it as an issue and then
17 it becomes more prevalent. I don't know. I would
18 hope they do the right thing and follow their
19 historic case law.

20 MAYOR COVIELLO: Councilman Carioscia.

21 COUNCILMEMBER CARIOSCIA: The DEP testified at
22 this hearing, correct?

23 MR. VARN: Yes.

24 COUNCILMEMBER CARIOSCIA: Did they testify in
25 favor of removing the lock?

1 MR. VARN: Yes.

2 COUNCILMEMBER CARIOSCIA: And I imagine that
3 there was a lot of testimony from the DEP to remove
4 the lock, correct?

5 MR. VARN: Yes.

6 COUNCILMEMBER CARIOSCIA: Okay. Who has the
7 final say in removing the lock?

8 MR. VARN: The secretary. It's a different --
9 the Department does through the secretary.

10 COUNCILMEMBER CARIOSCIA: So the DEP has now
11 joined us in the removal of the lock to the point
12 where they came in and gave testimony?

13 MR. VARN: Uh-huh.

14 COUNCILMEMBER CARIOSCIA: All right. The
15 administrator --

16 MR. VARN: Administrative law judge.

17 COUNCILMEMBER CARIOSCIA: The administrative
18 law judge finds, no, we're not going to remove the
19 lock, however, is it a suggestion that she made
20 because it doesn't stop the DEP from removing the
21 lock, does it?

22 MR. VARN: It has -- there are legal
23 implications. All of her findings of fact, they're
24 stuck with them unless the Department goes through
25 and makes a determination that either they're not

1 supported or the greater weight opposes what she
2 actually determined. And in some of those things
3 we do think there's not any -- there are not any
4 facts that support what she said.

5 COUNCILMEMBER CARIOSCIA: What does the DEP
6 feel, that there's some of those things or there's
7 no credibility?

8 MR. VARN: They disagreed with some of the
9 stuff also but --

10 COUNCILMEMBER CARIOSCIA: So what makes us
11 think that the DEP won't allow us to remove the
12 lock since they've already testified and they are
13 in favor of removing the lock and they find some of
14 the elements or some of the points that were made
15 by the administrative law judge, okay, wasn't in
16 fact credible? So why don't they remove the lock?
17 What are we concerned about? The entity that
18 testified with us to remove the lock makes the
19 final decision.

20 MR. VARN: Sort of. It's a different -- it
21 goes through a completely different process at this
22 point. They're bound by generally the facts as the
23 ALJ found. And let me point to an easy one. They
24 made a determination that there will be adverse
25 impacts to the fish and the fauna, okay, and that's

1 a weight issue between our expert, Tony Janicki,
2 who said there won't be any, and their expert that
3 said there will.

4 There's some legal arguments that we made
5 regarding this, but bottom line is she believed
6 their expert over our expert. And the department
7 can't change that. If the only question is whether
8 or not one was more believable than the other, they
9 have no -- they have no ability to change it. In
10 fact, if they do and it gets appealed, which I feel
11 comfortable it would, they would be nailed with
12 attorney's fees for the appeal for changing it
13 improperly. So they do not have an option to do
14 that. The options they have are very limited.

15 Like I said, there are certain things we
16 pointed out, which we don't think are supported.
17 Hopefully they'll switch that, but bottom line,
18 it's in a very bad posture to be overturned because
19 of the at least one or two findings that she made
20 as to adverse impacts, and that was as simple as
21 she believed their experts over ours.

22 COUNCILMEMBER CARIOSCIA: That's all I've got.

23 MS. MENENDEZ: So I guess to follow what
24 Councilmember Carioscia just said, if the DEP, if
25 the secretary of the DEP's final order is in our

1 favor, then probably all that we're about to talk
2 about is not going to be too applicable. We'll be
3 potentially in a position of defending an appeal
4 that will be filed by Matlacha.

5 MR. VARN: Right.

6 MS. MENENDEZ: Okay. But what I'm hearing is
7 that even though it's technically still the DEP,
8 and even though the DEP at the trial level, at the
9 lower level, was on the same side as the City that
10 there's this like curtain between the arm -- the
11 secretary and the arm of the DEP that issues the
12 final orders and the arm of the DEP that's involved
13 in the permitting and the trial arguments. So it
14 would be wonderful if they found in our favor but I
15 think what Craig is saying is you can't just --
16 they're not one for this purpose. It isn't like I
17 go to trial and I argue in your favor and then when
18 the recommended order comes down I just go, well,
19 I'm just going to find in favor of what I was
20 arguing below anyway because the cards are all
21 stacked in my favor. So there is that like curtain
22 between the two arms of the DEP.

23 MAYOR COVIELLO: Isn't that more or less --
24 and I'll get to Councilman Williams in one second.
25 The DEP that gave us the approval is the one down

1 here in Fort Myers and this is going to be reviewed
2 up in Tallahassee; is that correct?

3 MR. VARN: Yes, but we involved Tallahassee
4 quite a bit through the process. Again, going back
5 to the one issue that I had raised, I told you them
6 giving us credit, we had numerous discussions with
7 Tallahassee on an ancillary issue to that, that --
8 so I'm not sure it ever went to the secretary, but
9 it went high up. We at least talked to one deputy
10 secretary about it. So, but, yeah, what happens
11 now is they are cut off though. They can't talk to
12 each other.

13 MAYOR COVIELLO: Right. The local DEP really
14 can't have any influence over what's going to
15 happen --

16 MR. VARN: Yes.

17 MAYOR COVIELLO: -- up in Tallahassee.

18 MR. VARN: That's the easiest way.

19 COUNCILMEMBER WILLIAMS: Let me go back to
20 where I was before I got cut off. We were talking
21 about the ecologist and so forth. The -- anybody
22 that looks at anything out there and telling you
23 that it's going to affect the fish, it's going to
24 affect the fauna, everything, what's got to be
25 followed here is where is the water coming from?

1 The water in the south spreader doesn't go into
2 Matlacha Pass. It goes into the river.

3 MR. VARN: You're preaching to the choir, sir.

4 COUNCILMEMBER WILLIAMS: I know, but that's
5 what -- we have to push that issue. I don't know
6 how Matlacha can say anything other than that.

7 MR. VARN: Well, you know, I don't want to get
8 into -- I will tell you they changed their -- well,
9 actually I shouldn't say they changed. The judge
10 changed the dynamic on us, because the whole issue
11 up front was how we were -- the spreader was
12 discharging over in that direction, which ignore
13 for the moment that it had to go through all those
14 little wetland areas and all that before it got
15 to --

16 COUNCILMEMBER WILLIAMS: When the lock is in,
17 the water pressure will force it out. You take the
18 lock out, that will stop.

19 MR. VARN: Right. Well, so what the judge
20 did, even though it was never raised as an issue,
21 determined that when we do that we're going to make
22 the flow virtually go to zero, and she implied that
23 as a result of that there will be adverse impacts.
24 You know, that -- and I'll just say it. That was
25 completely wrong. You can't get from a flow of

1 zero to automatic impacts. That has nothing to do
2 with anything. It's water levels, first of all.

3 MR. SZERLAG: Tidal action.

4 MR. VARN: And so -- yeah. I'm going to get
5 upset about this, but, yeah.

6 So you are absolutely correct. The problem is
7 it's what she found, and, again, it's one of those
8 things that she implied, and so my struggle with
9 telling you -- again, I think we did what we needed
10 to do to win this case. I'm still comfortable --
11 looking back would I do things differently?
12 Absolutely. I always learn, but looking at this
13 from an appellate side, it is very difficult to --
14 it's going to be difficult for the department to go
15 through and every single thing that she found to
16 overturn every one of them. And so I think just
17 speaking as sheer numbers statistically, the odds
18 aren't good in that, and that's why I'm trying to
19 prepare.

20 MAYOR COVIELLO: We're going to get a final
21 hearing against us again is what you're saying, and
22 that's --

23 MS. MENENDEZ: The final order.

24 MAYOR COVIELLO: Final order, around March
25 11th or thereabouts?

1 MR. VARN: Yes.

2 MAYOR COVIELLO: Let me ask a question because
3 this was an administrative hearing.

4 MR. VARN: Uh-huh.

5 MAYOR COVIELLO: The next level to me would be
6 to go into a courtroom. I mean, we have a guy that
7 doesn't have a law license fighting us on an
8 administrative hearing.

9 MR. VARN: And that's completely legal. He's
10 absolutely allowed to do that.

11 MAYOR COVIELLO: But if we go into a courtroom
12 and we do some kind of a legal proceeding, then he
13 can't do that; is that right? So how do we get to
14 the next level?

15 MR. VARN: Actually, if you went to a -- well,
16 anywhere you go he can represent himself. He can't
17 represent other people, but he could represent
18 himself absolutely. So I don't think it will
19 matter one way or the other on that issue, and,
20 frankly, in the administrative process there's a
21 provision under statute that allows -- it actually
22 exempts it from the unlicensed practice of law when
23 you act as a QR at the Department of Administration
24 Hearings.

25 MAYOR COVIELLO: Let me ask you a question.

1 Would we be potentially more successful if we go
2 into a court of law with some kind of a lawsuit as
3 opposed to these administrative hearings?

4 MR. VARN: You don't have an option to do
5 that. The only option you have is to go on appeal.
6 You can't go into any circuit -- well, I guess let
7 me stop. Are you talking about getting the permit
8 issued or attacking the -- personally the other
9 person? That's a whole different -- I'm not going
10 to opine on that because that's not my area, but if
11 we're talking about getting a permit to withdraw
12 the lock, your only opportunity is to go to DEP,
13 get the permit and take it through an
14 administrative process and then up through the
15 appellate courts. There is no circuit court
16 action. It's specifically designated as an
17 administrative process.

18 MS. MENENDEZ: But if they wanted to appeal
19 the final order, if they're not happy with the
20 final order, which was the very first one you went
21 through, which you were recommending against, that
22 would be at the circuit court level.

23 MR. VARN: No. That would be an appellate
24 court. It goes straight to the appellate court.

25 MS. MENENDEZ: Straight to the Second DCA?

1 MR. VARN: Yes.

2 MS. MENENDEZ: And would the -- Matlacha Civic
3 Association would not to able to be represented by
4 Mr. Hannon in this case. Is Mr. Hannon one of the
5 plaintiffs himself, individually?

6 MR. VARN: Yes.

7 MS. MENENDEZ: So he would be able to
8 represent himself even at the Second DCA if he
9 elected to do that?

10 MR. VARN: Right. And I'm not sure he has
11 standing, but bottom line is we didn't argue a
12 whole lot on standing simply because they had a
13 couple of city residents that lived on the water,
14 and so, somebody would get in. Somebody would be
15 able to do it. I'm not sure that the Matlacha
16 representatives would have standing. There's a
17 different level of standing at the appellate level
18 that I won't get into, but it's a harder level to
19 get at the appellate level than it is at DOAH.
20 It's fairly easy at DOAH.

21 COUNCILMEMBER WILLIAMS: We had a similar
22 problem in the north when we had the barrier up
23 there.

24 MR. VARN: Uh-huh.

25 MS. MENENDEZ: As soon as the word got out

1 that we had been approved to take the barrier out
2 Matlacha went bananas. Instead of getting it into
3 the court system because, you know, nothing against
4 lawyers and judges but they don't know crap about
5 this.

6 MR. VARN: Yeah.

7 COUNCILMEMBER WILLIAMS: We had what we called
8 an EMA process, Ecosystem Management Agreement
9 process, where we all sat down together. For two
10 years we talked, and we had the ecologist, the
11 environmentalist, the engineers, DEP, you know,
12 interested parties, that type of thing, and we came
13 to at that point an agreement of what we were going
14 to do. We pulled the barrier out and most of the
15 EMA net economy system benefits, is what we were
16 calling them, have been done; we're doing it now.
17 That's why we got -- the northwest is torn up like
18 a war zone. That's in response to getting sewers
19 in up there and that type of thing.

20 Is this something we could do to get it first
21 out of the courts, to get it out of the expensive
22 negotiating, using lawyers and judges, could we
23 somehow work with Matlacha and say, okay, let's sit
24 down and talk about it, put together a process and
25 you tell us what we need to do to be able to take

1 that lock out?

2 MR. VARN: Voluntarily, yes. They can -- you
3 can -- if they'll agree to it. Can you force that
4 process? No. The reason you could do that was
5 because it was with DEP. DEP was denying, if I
6 remember right. Actually that's the reason I first
7 started working with the City, was Steve and I had
8 an issue with some portion of that. I don't
9 remember. They were arguing about fixing
10 something, and that was -- that nonsense we got DEP
11 on our side to say you've done everything you're
12 required to, go away.

13 So, but, no, that issue was specifically
14 because there was a disagreement with whether you
15 could get the permit from DEP, if I recall, and so
16 there was -- it became a much bigger dynamic. But
17 the answer to the question is if they would agree,
18 yes, but you can't force the issue.

19 The only way -- the only thing you can force
20 is through the administrative process. That's
21 unfortunate, but, you know -- you know, there's no
22 harm -- or let -- there's little harm in letting it
23 proceed. I think you can combat everything that
24 happened in this through all the other avenues that
25 I'm talking about. So if you really want to, going

1 through and letting it -- and seeing how DEP run
2 its course, I feel very comfortable that they're
3 not going to flip it, but if -- you know, you can
4 do that and you can still follow. It doesn't kill
5 you on doing any of the other alternatives that
6 I've mentioned. So, you know, that may be where
7 you want to go, but if you want to remove the lock
8 you're going to have to do one of these, and I
9 don't think appeal is your way.

10 I understand you want to get -- you know, I
11 shouldn't say, quote, unquote, real judges because
12 my wife gets very upset when I say that since she's
13 an administrative law judge, but, you know, an
14 Article V judge, let's put it that way, you know,
15 and get one of them. But, again, I don't -- I
16 think the best you're going to get is that we'll be
17 right back here, and I would not suggest you go
18 back through this process, a new hearing without
19 addressing some of these issues because it's going
20 to come down to a he said/she said. And so even
21 if -- what I'm proposing, even if they agree with
22 their expert that there will be harm, you will have
23 mitigated that harm, and that's the backup there.

24 So, you know, again, whether it's me or not,
25 if you want to remove this you're going to need to

1 do these things. I'm not -- anybody is going to
2 have you do it.

3 MAYOR COVIELLO: Councilman Williams, you've
4 got more questions?

5 COUNCILMEMBER WILLIAMS: No, I've given up.

6 MAYOR COVIELLO: Councilman Gunter.

7 COUNCILMEMBER GUNTER: Actually you kind of
8 answered the question I was going to ask, but the
9 question was, was there any harm waiting for DEP
10 because, you know, what I want to make sure is we
11 don't do something prematurely and that offends DEP
12 in some form or fashion, so that's why I've said
13 I'm kind of thinking maybe it would be best to
14 let's see what DEP is going to do first, you know,
15 before we start shaking the can. That's kind of my
16 opinion.

17 MR. VARN: Well, I would ask before
18 withdrawing -- you can unilaterally withdraw it if
19 you wanted to. I would recommend, if you chose, we
20 would ask first. Say, hey, we're just going to do
21 this. We're going to kind of pull back, regroup
22 and re-file just to get a thought from them, but it
23 doesn't sound like we're going to go down that path
24 anyway, so it's out, but I wouldn't do anything
25 just to screw DEP.

1 COUNCILMEMBER GUNTER: Right. Now what
2 happens with -- we can either re-file or keep this
3 in motion as far as if we do want to withdraw the
4 lock. Timewise what's -- to me it seems like it's
5 taken us forever to get to this point, to be quite
6 honest with you.

7 MR. VARN: A couple issues real quick. If
8 this goes through, DEP issues a final order. This
9 one is dead unless you appeal it. So we would do a
10 new application, so that's why I tried to
11 distinguish between amendment and new. That would
12 be a completely new application because the old
13 application has been denied.

14 MAYOR COVIELLO: And that's the one that you
15 said is 1.5 million roughly to go do all these
16 things?

17 MR. VARN: If you're going to redo it you need
18 to be prepared to spend 1.5. Again, you need the
19 ecologist to come in. You need to hire that
20 person, and then once they come up with a UMAM
21 score on your worst case, that would give you the
22 figure on moving forward. So I'm just trying to
23 think of a worst case scenario. You won't be
24 spending any of that dollar until you get a result
25 -- a response from your ecologist. So I'm just

1 trying to forewarn you, but yeah.

2 COUNCILMEMBER GUNTER: And the last question I
3 was going to ask was if we -- I think, first of
4 all, we've got to decide if we're going to remove
5 the lock or not. If we do, my question to you
6 would be if we do want to remove the lock, in your
7 professional opinion what would be the best avenue
8 to take?

9 MR. VARN: Exactly what I've described to you.
10 You need to be prepared to spend the money to
11 mitigate because I can't control -- the one thing I
12 can -- I know I can control is which expert she's
13 going to believe or he, whoever the judge is. And
14 so to cover that scenario where they don't believe
15 our expert, you can offset impacts through
16 mitigation. So we'd have to have that as our
17 backup. And that's the only way you're going to
18 feel -- I'm going to feel comfortable moving
19 forward.

20 One other real quick, I'm sorry, I meant to --
21 you said the timing. Yeah, and that's -- we would
22 not -- whoever your next person is or whoever does
23 this shouldn't let that happen. We would address
24 that in the forefront as opposed to letting -- what
25 happened at the end of this hearing, and we

1 addressed it, is that the judge on her own motion
2 waived the timelines, which there's no authority
3 for doing that, and we objected, and it fell on
4 deaf ears. And once that timeline is waived the
5 timelines go out the door.

6 And so that happened. I will say on the flip
7 side of that there is no penalty for failure to
8 issue, but once the time is not waived they are a
9 little bit more -- you know, you may get a 30-day
10 waiver of time, but, you know, six months is
11 absolutely ludicrous. But, again, on her own
12 motion. So that wouldn't happen again. We've got
13 other cases where we're dealing with that ahead of
14 time, so we know to be prepared for this. It's not
15 the first time it's happened unfortunately. The
16 other time wasn't nearly as egregious but that's
17 where we are. I apologize. I wanted to hit the
18 timing issue before.

19 MS. MENENDEZ: So let's say that the council
20 remains interested in removing the lock, and the
21 city manager would be able to at least allude a
22 little bit to while the lock is still there what
23 costs might we be incurring in the near future.
24 But assuming they remain interested in removing the
25 lock and they do not want to appeal, and they do

1 not want to withdraw and re-file right now, would
2 they be able to, as a council, consider this, leave
3 the lock in place, do some maintenance and then in
4 a year, for example, come back and file a new
5 application, or would there be some other timeline
6 that they need to be concerned about as they make
7 this decision?

8 MR. VARN: It's a nullity at that point. You
9 can do whatever you want. It has no bearing going
10 forward. That's up to your timeline.

11 MAYOR COVIELLO: Councilmember Welsh?

12 COUNCILMEMBER WELSH: What is the cost to
13 maintain the lock and operate it?

14 MR. SZERLAG: I had asked that exact question
15 of Paul Kling, as well as another question, and
16 that is that because the traffic, the boat traffic
17 is so severe at Chiquita lock what would it also
18 cost to build a parallel lock north of the existing
19 lock, and it would cost about one to \$2 million to
20 repair the existing lock and make it functional.
21 We've done hardly nothing to it. Paperclips and
22 rubber bands and duct tape is about it because we
23 thought we would win the case and remove it. The
24 cost to make that existing lock functional would
25 also be between one and \$2 million. Once we take

1 the gates down, we replace them, we don't know what
2 the structure -- the integrity of the structure
3 that's holding those gates in place. So that's an
4 estimate though, another one or two million to
5 replace or repair those locks to make them
6 functional.

7 The parallel lock to mitigate boat traffic
8 would be about \$25 million, and that's more than a
9 spitball number because back in 2007 there was a
10 study to build a parallel lock and that study
11 indicated \$17,400,000. There's something called an
12 ENR, an engineering news record, and what that does
13 is it takes an infrastructure project and it looks
14 at the inflation rates of labor and materials, so
15 that same lock that was estimated in 2007, to
16 replicate that in 2020 would go from 17 million to
17 25 million.

18 MS. MENENDEZ: But if they wanted to keep this
19 one in place it would be an initial 1.2 million or
20 so to repair it to bring it up to snuff?

21 MR. SZERLAG: Right.

22 MS. MENENDEZ: And then there would be annual
23 maintenance cost, of course, but they would not be
24 1.2 million, they would be more routine
25 maintenance?

1 MR. SZERLAG: I don't have those annual
2 maintenance costs, but --

3 MS. MENENDEZ: Oh, one to two --

4 MR. GRIFFIN: One million to two million.

5 MS. MENENDEZ: Okay. One million to two
6 million to bring it up to snuff and then routine
7 maintenance thereafter. That's not talking about
8 building another lock.

9 COUNCILMEMBER GUNTER: Is it functional right
10 now?

11 MR. SZERLAG: It's working right now. I
12 wouldn't call it functional. I think it could
13 break at any time.

14 MAYOR COVIELLO: Councilmember Stout.

15 Councilmember Welsh, are you done? I'm sorry.

16 COUNCILMEMBER WELSH: No. What's the time
17 frame on repairing the lock so that it's usable?

18 MR. SZERLAG: Again, it's usable right now.

19 COUNCILMEMBER WELSH: We're using it, but it's
20 really not functioning at full capacity.

21 MR. SZERLAG: Well, again, it's slow, all
22 right, and I don't know if it could be any faster.
23 But Mark Ridenour, who is in charge of facilities,
24 has advised that we've done very -- a very small
25 amount of maintenance because we didn't want to

1 throw money away on upgrades. So if council
2 decides that they want to repair the lock we would
3 immediately begin that work to repair the lock.

4 MAYOR COVIELLO: Can we just do a quick poll
5 of who would like to see the lock removed?

6 COUNCILMEMBER STOUT: Well, wait, can I ask a
7 question because that might affect --

8 MAYOR COVIELLO: Sure.

9 COUNCILMEMBER STOUT: My question is are you
10 sure that when we hire this ecologist that they're
11 going to say what we want them to say?

12 MR. VARN: I mean, what I've told you, yes,
13 I'm sure they will say that because I've told you
14 what I think they're going to say the first time,
15 and then I'm going to have them analyze the worst
16 case scenario what they've raised. So, yeah, they
17 will say one of those. I'm guessing, given what
18 I've seen, that the actual impacts are going to be
19 very small. I mean, I could tell you, okay, but
20 the bottom line is, you're not going to -- this is
21 not going to change the dynamic significantly. In
22 fact, it will probably have less impact on a couple
23 of the, what we call breach 20, because it will
24 lower the flow and reduce sedimentation. And so
25 instead of pushing out through this narrow hole,

1 you're going to open it up and it will have a much
2 more gradual flow.

3 So the big issue they raised was the height of
4 the water level and it will drop because it will be
5 much more tidally influenced by probably another
6 foot. What nobody really looked at was, because we
7 didn't think that -- it's going to do this, which
8 it's already tidally influenced so we didn't think
9 that was going to change because the tide's going
10 to go up, it's going to come down. It will stay
11 wet. We didn't look at how much that might change
12 because we didn't think it would do any. So in
13 this situation I'd say, well, let's assume that's a
14 negative. How much would it impact -- you know,
15 what percentage of the mangroves. And I just can't
16 imagine it's going to be more than, you know, spots
17 here and here. Even looking at the north.

18 So, you know, again, to answer, yeah, they're
19 going to say what I think they're going to say
20 because I'm going to give them the broad span. Do
21 I know for sure that they're going to say there
22 will be no impacts? Absolutely not. And I'll go
23 even further and say can I guarantee you that we
24 could win this case on a second time? No, I would
25 never guarantee that.

1 Do I feel very strongly that this case would
2 be -- we -- well, this would be our best foot.
3 There's nothing we could -- I would -- I would not
4 leave anything unturned -- uncovered this time like
5 you could argue that I did the last time. I didn't
6 think it was necessary. Bottom line, no, I didn't
7 do it, and I would have spent more time, and this
8 time I can guarantee you that will happen. I will
9 be --

10 COUNCILMEMBER STOUT: I was just concerned
11 about spending the 1.5 and having our expert
12 witness against us.

13 MS. MENENDEZ: I don't think your concern
14 needs to be that our expert witness will be against
15 us. What I do think you need to understand is that
16 let's assume that we decide that we want to amend
17 our petition, and so what we do is we line up the
18 expert and we line up this mitigation -- well, all
19 the costs associated with that as our backup and we
20 go in and our expert says exactly -- all of our
21 experts say exactly what it is that we want them to
22 say and their experts say exactly what they want
23 their experts to say, and we have -- in addition to
24 all of our experts we have money set aside or
25 whatever we've gotten, agreements as to mitigation

1 that could be offered up to mitigate any of these
2 impacts, plus the experts are saying every single
3 thing we want them to say, all the ones we're
4 introducing and we're in front of either this one
5 or a different administrative law judge, and all of
6 that lines up complete with the mitigation, if
7 we're willing to do all of that at whatever cost
8 that turns out to be, I don't know, \$5 million, but
9 we're really solid on that; we win?

10 MR. VARN: I would never guarantee a win.

11 MS. MENENDEZ: That's why you need -- as much
12 as your witness is going to be on your side -- I
13 believe we'll find a witness that will be on our
14 side, but it is not a guaranteed win. It's
15 possible that we will put this money into it and we
16 will find ourselves sitting here talking about how
17 an administrative law judge ruled against us no
18 matter that we believe we did everything right. I
19 mean, it is possible that we'll fail.

20 MR. VARN: Right. The mitigation though
21 doesn't -- that's all conditioned on the permit
22 issuance. So the one million, whatever the
23 mitigation, that's all conditioned so the permit
24 gets issued, then you'd have to do it. It wouldn't
25 be you spend the money up front on that. The fees,

1 the hiring, yes.

2 And I want to -- one thing that's interesting
3 about the ERP permit is you can mitigate for all of
4 your adverse impacts, so you can in theory,
5 everything they say, you can say, got it, I'm
6 offsetting it through this. As long as you tit for
7 tat, in theory there should be no way to lose, but
8 you cannot guarantee.

9 MS. MENENDEZ: Can they do that now?

10 MR. VARN: Not now, no.

11 COUNCILMEMBER WELSH: Basically that's what I
12 was going to ask you to clarify, was that we're
13 really not forking out a million five, it's more
14 like 250?

15 MR. VARN: Yes.

16 COUNCILMEMBER WELSH: And the million two
17 fifty would have been the mitigation.

18 My other question is how long has this process
19 already taken us to get to this point? What's the
20 time frame on it?

21 MR. VARN: I don't know when you began the
22 process, so I can tell you legally from -- it's
23 been a year at least.

24 MR. GRIFFIN: I think staff, Oliver, in
25 particular Oliver Clark, started on this about

1 three and a half to four years ago.

2 COUNCILMEMBER WELSH: So then are we looking
3 at another three to four years?

4 MR. VARN: No, absolutely not.

5 COUNCILMEMBER WELSH: What type of a time
6 frame would we have ahead of us if we decide to
7 proceed?

8 MR. VARN: I'd need to talk to the ecologist.
9 Right away what I would say is I need you down
10 here. I need you to -- whatever it's going to take
11 we're going to tour both the south and north
12 spreader, we're going to look at everything, and
13 I'm going to be hand holding through all of this.
14 So I would hope within six weeks we can get him
15 down here, let's assume that, process everything,
16 get a new application, assuming DEP needs -- you
17 know, another two months for that. But in terms of
18 the hearing, we'd push that. We wouldn't allow the
19 last thing. So I'd say look at a year. I think
20 that's --

21 COUNCILMEMBER WELSH: So we look at a year,
22 best case scenario. In the meantime because I'm
23 concerned about the condition of the locks and the
24 repairs that would ensue if we have to just keep it
25 operating, so what kind of money are we looking at

1 there for a year to keep it operating?

2 MR. SZERLAG: I'll have to ask Mark Ridenour,
3 you know, what his diagnosis is, if you will, to
4 see if we could -- what it would take to keep the
5 lock running for a year. And I'm sure he's going
6 to hedge his own bets and say, John, it's going to
7 be a range of costs. You know, things can still
8 bumble along the way that we have been, making
9 repairs at a minimal cost. It's going to be X if a
10 gate falls off.

11 COUNCILMEMBER WELSH: Or even just, yeah, a
12 couple of pieces, just curious what it's going to
13 cost.

14 MR. VARN: You spent \$200,000 approximately
15 over the last year or so on repairs.

16 COUNCILMEMBER WELSH: And if the gate fell off
17 -- if the gate fell off, just speculating, the gate
18 fell off, what kind of fines do we pay because of
19 that?

20 COUNCILMEMBER WILLIAMS: They sink.

21 COUNCILMEMBER WELSH: What kind of fines would
22 we pay because the gate fell?

23 MR. VARN: All our problems are over at that
24 point. Fines, I don't think the department is
25 going to fine you for something like that. Would

1 you need to fix it? Yes.

2 Another thing you haven't talked about -- what
3 we didn't talk about -- you actually have a permit
4 now to leave the gate open at times, so that's
5 already been kind of considered, so there is a
6 mechanism by which it stays open, so you can
7 probably tie that in. So I don't think you're
8 going to need to worry about being fined. Would
9 they probably make you come back and fix it until
10 this permit issues? Yes.

11 COUNCILMEMBER WELSH: So how long can we keep
12 the gate open according to that?

13 MR. VARN: Honestly, I don't recall. I'd just
14 use it as a defense.

15 COUNCILMEMBER WELSH: Is it a daily basis, is
16 it monthly, is it weekly? How long can we --

17 COUNCILMEMBER STOUT: I think it's daily at a
18 particular tide.

19 MAYOR COVIELLO: The problem is --

20 COUNCILMEMBER WELSH: And do we keep it open
21 now?

22 COUNCILMEMBER STOUT: Yeah.

23 MAYOR COVIELLO: The problem is it's so narrow
24 that when the tide flows and it's very narrow the
25 current going through there is very strong, and it

1 makes it very difficult for boats, especially small
2 boats, to navigate through the lock. It's a safety
3 issue.

4 MR. GRIFFIN: Again, I do know as a condition
5 of the current permit we have for the lock there
6 are periods of time when -- at severe weather times
7 that we can leave it open. For example, if there's
8 a hurricane predicted or if there's some violent
9 weather predicted you could leave that gate open;
10 you're allowed to do that.

11 COUNCILMEMBER WELSH: So have we maximized the
12 open gate for as much as they'll allow us to keep
13 it open? Have we done that?

14 MR. VARN: We've got -- well --

15 COUNCILMEMBER WELSH: Do we maximize that open
16 gate?

17 MR. VARN: I wasn't involved when that
18 happened --

19 COUNCILMEMBER WELSH: I'm just curious.

20 MR. VARN: -- but my understanding is that
21 we've got the most that the department will allow.

22 COUNCILMEMBER WELSH: Okay. So we do that?

23 MR. VARN: Yeah.

24 COUNCILMEMBER WELSH: Which to me means we're
25 operating it less because we leave it open more and

1 so forth. Okay.

2 MR. VARN: I think to the mayor's point, I'm
3 not sure -- the speed at which the water flows
4 through there and that being the issue, I'm not
5 sure -- if you're telling me people are using it,
6 that's a pretty significant safety issue because --

7 MAYOR COVIELLO: Well, I think that's why we
8 have certain times it's allowed to stay open.

9 MR. VARN: That's right.

10 MAYOR COVIELLO: It's based on tidal flow.
11 When the tide flow is not huge, they leave it open,
12 and when it's big, they close it.

13 MR. VARN: There's lights that go on too, I
14 forgot, that warn of the velocity of things like
15 that, so anyway --

16 MS. MENENDEZ: You should be aware when John
17 says -- when Mr. Szerlag says, well, he's not
18 entirely aware and everybody starts to speculate,
19 no one else could attend this, so his staff is not
20 allowed to attend the attorney/client session to
21 provide that kind of information, by law they're
22 just not allowed, so it is certainly something that
23 could be further inquired and he can get you that
24 kind of information. But in terms of whether or
25 not we're maximizing the number of hours or

1 whatever that we're able to keep it open, I don't
2 think that -- I'm hearing him say that he's not
3 comfortable in representing that to you, so just --

4 MR. SZERLAG: And I agree with Steve. I think
5 there has to be a weather event that triggers that.

6 MS. MENENDEZ: Okay. I'm sorry, I didn't mean
7 to interrupt.

8 COUNCILMEMBER GUNTER: And you'll get us
9 clarity on that?

10 MR. SZERLAG: Yes, I will.

11 COUNCILMEMBER WILLIAMS: You're talking about
12 bringing in an ecologist. You should also have a
13 geologist, an environmental person, because the
14 water flow is just as important as the ecology
15 around it.

16 MR. VARN: Right.

17 COUNCILMEMBER WILLIAMS: And, you know, if
18 we've got a problem here, if it stays here there's
19 no problem, but if it gets out there then it could
20 be a problem for them.

21 I know that we had a lot of problems with the
22 preserve in the north section because we weren't
23 getting the sheet flow over the top of it, so
24 you've got to know how high is the land versus the
25 tidal -- high tide. You know, the amount of force

1 that that water creates is pretty substantial. You
2 know, she just said -- suggested what I was going
3 to suggest, just open the damn lock and leave it
4 open. That would also give us an opportunity to
5 test and find out what's coming in and where it's
6 going.

7 As far as I can see, when the tide's coming in
8 it's coming from the river. When it's going out,
9 it's going back to the river.

10 MR. VARN: Right.

11 COUNCILMEMBER WILLIAMS: I don't understand
12 why there's such a big problem with that. It's not
13 going into Matlacha Pass. The river is going into
14 Matlacha Pass.

15 MAYOR COVIELLO: Well, let me ask a question,
16 because I've heard there's several breaches north
17 of the lock through the mangroves. Have we been
18 taking any aerial photographs of that at all?

19 MR. VARN: Yeah, we considered all that. Tony
20 actually did the measurements that you're talking
21 about. We took that into consideration. With
22 respect to the quality issue, Tony can handle water
23 quality. That's not a problem.

24 COUNCILMEMBER WILLIAMS: Okay.

25 MR. VARN: Why is it an issue is because the

1 river is an impaired water body, and so there's --
2 and that's -- remember, I was mentioning earlier
3 about the conversations I had with Tallahassee, we
4 had a long debate as to -- you cannot impair an
5 already impaired water. You cannot add additional
6 loading, and so what we tried to point out was the
7 water in the lock area is actually better than the
8 river so there's going to be a net improvement.

9 COUNCILMEMBER WELSH: Yep.

10 MR. VARN: What they argued and DEP actually
11 was kind of iffy on was the load number. And we
12 said there was no loading. That got lost. We've
13 addressed that, but that's why it's an issue. You
14 cannot add to the impaired water body, and so
15 that's -- but Tony addressed that. That's not my
16 concern. We can hit that again. That's done.

17 COUNCILMEMBER WILLIAMS: We consistently test
18 our water in the canals.

19 MR. VARN: Uh-huh.

20 COUNCILMEMBER WILLIAMS: And it always comes
21 out better than the water outside. Like in this
22 case Matlacha is much more polluted than the north
23 spreader system is.

24 MR. VARN: Right, right. I know -- you're
25 right.

1 COUNCILMEMBER WILLIAMS: The south spreader,
2 the only time it's going to get bad is when the
3 lock is open or missing and the river flows in, but
4 the tide's going to drive it back out again. It's
5 just in and out, in and out, but both -- all canal
6 systems act as a settling agent, settling ponds.
7 So all of the canals clean the water somewhat, not
8 totally but they take a lot of the silt out. They
9 take some of the nitrogen loading out of there, but
10 they don't understand this. Matlacha is the
11 biggest polluter with all those palm tree farms.

12 MR. VARN: Yeah, settling wasn't an issue. It
13 was a nitrogen issue, and there's very little
14 nitrogen uptake in the canal unfortunately.

15 COUNCILMEMBER WILLIAMS: Right, very little.

16 MAYOR COVIELLO: Councilmember Welsh.

17 COUNCILMEMBER WELSH: Can we -- is it possible
18 to submit a new application and have the ecologist
19 and leave the other application in process?

20 MR. VARN: Yeah, yes.

21 COUNCILMEMBER WELSH: Can we do that
22 simultaneously?

23 MR. VARN: Yes. My only concern, and I have
24 to talk to DEP about it, whether they'd want to
25 start anew while the other one is still pending.

1 They might see some -- but, like I said, it's going
2 to take us a little bit of time to hire the
3 ecologist. To get them to develop the report, it
4 will probably be coming about the same time, so
5 that's why I'm saying it's not a huge issue. It's
6 an issue for me from a legal standpoint, but you
7 don't need to worry about that because, you know,
8 it is what it is.

9 MAYOR COVIELLO: We can get started on going
10 forward, just not submit it until you get the
11 final --

12 MR. VARN: Absolutely. If that's the
13 procedure you want to follow, yeah, you can get
14 started right away and we just don't have to bring
15 DEP in at this point. I mean, again, they were on
16 our side, so I think they're going to continue to
17 be.

18 MAYOR COVIELLO: Is there any way -- I mean,
19 this was a judge up in Tallahassee that never came
20 down here, never saw the lock, never saw the
21 waterway, just saw pictures; am I correct?

22 MR. VARN: No, she was down here. She came
23 down for the hearing.

24 MAYOR COVIELLO: Is there any way to get a
25 more local judge to hear this case or it's got to

1 be out of town?

2 MR. VARN: Unfortunately, the way the division
3 works is they have a fairly small number that
4 handle these types of cases. Judge Ffolkes was one
5 of them. Judge --

6 MAYOR COVIELLO: Will we be able to get a
7 different judge?

8 MR. VARN: We will be getting a different
9 judge this time. I'll be filing a motion to recuse
10 if this judge comes in again. Yeah, I'll leave it
11 at that.

12 COUNCILMEMBER STOUT: That was my question,
13 will we end up with the same judge.

14 MR. VARN: I don't -- never mind. Yes, we'll
15 be applying to get a new judge. I can't imagine
16 that we would get the same judge again.

17 MAYOR COVIELLO: So now can I ask for a show
18 of hands of who would like to remove the lock?

19 COUNCILMEMBER STOUT: I think it makes sense.

20 COUNCILMEMBER CARIOSCIA: Absolutely.

21 MS. MENENDEZ: So it appears that council
22 would like to remove the lock. I'm not hearing you
23 say that you're interested at this time -- if the
24 decision comes down against us, that you're
25 interested in appealing it. What I'm hearing is

1 that you are more supportive of the notion of
2 filing a new application in the event that the
3 order is not in our favor, which it is likely that
4 it will not be.

5 MAYOR COVIELLO: And I think I'd take it a
6 step further. I'd like Mr. Varn to start working
7 on it right away so as soon as we get that ruling
8 we can put the wheels in motion right away.

9 MS. MENENDEZ: So just so you're aware, and I
10 know one of the things he's probably about to say
11 is that Mr. Varn had capped his fees the last time
12 at \$50,000, and, in fact, we had inadvertently paid
13 him 54 so we've got a credit against another matter
14 that he's handling for us, but it is my
15 understanding that Mr. Varn is not planning on
16 capping his fees in that way for this next
17 endeavor; is that accurate?

18 MR. VARN: I will not. You guys -- I paid
19 more for this case than you guys did, just to be
20 fair, and so -- the most came out of my pocket.

21 MS. MENENDEZ: And that having been said, we
22 do have an ongoing relationship with this firm, but
23 for this reason we may want you to go ahead --

24 MAYOR COVIELLO: Let me just stop you. There
25 was a number thrown out --

1 (Comment by reporter due to simultaneous
2 speakers.)

3 MAYOR COVIELLO: There was a number thrown out
4 at 250.

5 MR. VARN: Yeah. And I would be -- I'm just
6 -- I would hope I wouldn't even come close to that,
7 to be honest with you. I'm just -- now knowing
8 what I've gone up against, the QR who is actually
9 an attorney and the amount of documents and
10 witnesses, I'm just trying to do my worst case
11 scenario on what this is going to take timewise,
12 and, you know --

13 MAYOR COVIELLO: Madam City Attorney, do we
14 need to discuss a dollar amount right here and now
15 so he starts working on this?

16 MS. MENENDEZ: Craig?

17 MR. VARN: Well I'd be happy to come back in,
18 you know -- well, first of all, it's not going to
19 be -- I'm not going to be doing much in the next
20 few weeks because I've got to get the ecologist.

21 Once the ecologist comes on board I do plan on
22 coming down here with him and doing all the touring
23 so I can point out all the specific issues. So
24 that will be -- I won't begin incurring any
25 significant amount of fees until we get this thing

1 ready to file with DEP.

2 Maybe what you want is we'll cap the fees.
3 Right now I won't spend more than 50,000 until I
4 come back before you and then tell you where we are
5 on everything. Actually it will be much less than
6 that, but pick a number, you know, 25, 30, I don't
7 care, and I'll come back before you. I'd like to
8 get through the ecologist's report so then I can
9 really tell you what I think the end number is
10 going to be. I can get a much better grasp on
11 things.

12 So if you want -- if you want to put a number,
13 we can put a number, or you can just tell me
14 continue working until we get the ecologist's
15 report, at which point I come back in and we
16 reauthorize further proceedings depending --

17 MS. MENENDEZ: I think that they want you to
18 continue work, is what I'm hearing?

19 MAYOR COVIELLO: Yeah.

20 MS. MENENDEZ: But I also think that what we
21 probably need to do, especially in light of all the
22 scrutiny that's going on right now in terms of our
23 council expenditures, is prepare a new engagement
24 letter that you think --

25 MR. VARN: Sure.

1 MS. MENENDEZ: -- delineates this hourly rate,
2 estimated cost, all that. We can look at it with
3 you and then we can place it on an agenda for
4 council to approve in the future. With the
5 understanding that to the extent that he is going
6 to be incurring some costs now that you're good
7 with him doing that? Because as I said, you do
8 have an underlying relationship with the firm.
9 This was not the only thing he's dealing with.

10 MAYOR COVIELLO: I think what I'm hearing is
11 we want to hit the ground running as soon as we get
12 the final order and hopefully -- I mean, if it
13 comes in our favor then we're in great shape, but
14 for some reason if it doesn't, which is what you
15 think is going to happen --

16 MR. VARN: And I can tell you, I already hit
17 the ground running. I'm already -- I've been
18 analyzing everything. Well, I mean, part of it I
19 had to, but I've been overanalyzing a lot of this
20 stuff to make sure that we've got everything going.
21 So we're already doing that, my firm is. So it's,
22 you know, there is some benefit to the past.

23 COUNCILMEMBER STOUT: I have a question that I
24 think I probably already know the answer to, but I
25 just need to ask it.

1 Does it make any difference since the DEP
2 secretary, all of these division chiefs, are
3 appointed by the governor, does it make any
4 difference if you have a senator or somebody
5 that -- to step in?

6 MR. VARN: Don't call. Do not do that. We
7 don't want to be accused of trying to improperly
8 influence.

9 COUNCILMEMBER STOUT: Influence. Okay.

10 MR. VARN: They know what their jobs are, as
11 much as I can disagree with a lot of them all the
12 time, they have a job to do. It's, you know, if
13 you -- I'm not telling you if you happen to talk to
14 your senator and you don't -- you know, complain,
15 obviously that's your right to do, but don't do
16 anything that would be perceived as attempting to
17 work through -- around them.

18 COUNCILMEMBER STOUT: To work around them,
19 okay.

20 MR. VARN: Right.

21 COUNCILMEMBER STOUT: I thought that was going
22 to be your answer, but I needed to ask.

23 MR. VARN: I'd love to be able to do that,
24 but, no, that's not what -- yeah.

25 MAYOR COVIELLO: I want to just ask

1 Mr. Szerlag regarding the significant impact that
2 this could have on the budget. Would we want to
3 consider perhaps using some FEMA money for some of
4 this, or would you find another way to fund the
5 1.5 million if it got to be that amount?

6 MR. SZERLAG: We do, again, based on one of
7 our budget sessions we indicated that we're putting
8 money aside on FEMA, moneys that come in, and
9 council can make that actually discretionary at
10 this point in time, so you can utilize the FEMA
11 moneys, I believe, for anything you like. It just
12 wouldn't be diverted to our disaster relief fund or
13 the general fund.

14 MAYOR COVIELLO: There's a certain amount of
15 dollars that we're going to look at utilizing.

16 MR. SZERLAG: Right.

17 MAYOR COVIELLO: This potentially might be one
18 of the areas that we look at.

19 MR. SZERLAG: FEMA money in terms of
20 reimbursement is most certainly one of the areas we
21 could utilize.

22 MR. VARN: And I will also -- I threw out the
23 mitigation. That's the easy go to. You just buy.
24 I would obviously work with John way ahead of time
25 to look at the projects you guys already have in

1 the pipeline. The only difference would be once
2 you agree to them as part of the permit they become
3 mandatory so that if something happened, you didn't
4 do the project, we'd have to amend the application
5 to put in something else in its place but...

6 MAYOR COVIELLO: You know, my attitude is very
7 simple. If you told me \$1.5 million would have
8 that lock removed a year from now I would say pay
9 it because it's only going to cost us more over
10 time to maintain it. So I'm not so concerned with
11 what it would cost to mitigate all this and do all
12 of this. My concern, like everybody's, is will we
13 get to where we need to be. Will we get it removed
14 after all this goes down.

15 MR. VARN: All right. I've got my orders.

16 MAYOR COVIELLO: I understand you can't give
17 that commitment because, you know, doing an
18 administrative hearing, like last time we thought
19 we -- I heard all good things, that we did a good
20 job and we covered all the administrative things
21 that we needed to do and everybody that sat in that
22 courtroom thought that we won that case and the
23 lock should have gotten removed, and for whatever
24 reason the judge ruled against us so...

25 MR. VARN: I just can only say I'm glad

1 somebody else thought that too because I can assure
2 you the day that I got the order that's not the way
3 I felt, but, you know --

4 MAYOR COVIELLO: So I guess to sum it up, what
5 we're going to do is we're going to move forward to
6 get things ready to file a new hearing, assuming
7 that we're going to have a final order against the
8 City of Cape Coral.

9 MS. MENENDEZ: A new application.

10 MAYOR COVIELLO: Everybody on board with that?
11 Okay.

12 MS. MENENDEZ: Then we need to reconvene in
13 the council chambers.

14 (Executive session concluded at 4:12 p.m.)

15

16

17

18

19

20

21

22

23

24

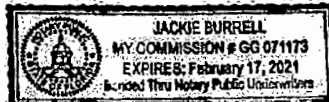
25

STATE OF FLORIDA)
COUNTY OF LEE)

I, Jackie D. Burrell, Registered Professional Reporter, and Notary Public in and for the State of Florida at Large, do hereby certify that the proceedings were had in the cause styled in the caption hereto on Page 1 hereof; that I was authorized to and did attend said proceedings and report the proceedings had therein fully and accurately in shorthand, and that the foregoing typewritten pages number 1 through 60, inclusive, constitute a transcript of my shorthand report of the proceedings taken at said time.

IN WITNESS WHEREOF, I have hereunto set my hand on January 27, 2020.

(This transcript has been digitally signed.)



Jackie Burrell

Jackie D. Burrell, RPR
Notary Public - State of Florida
My Commission Expires 2/17/2021
Commission Number GG 071173

WORD INDEX

< \$ >

\$1.5 10:15 60:7

\$125,000 16:5

\$150,000 10:4

\$17,400,000 36:11

\$2 35:19, 25

\$200,000 44:14

\$25 36:8

\$5 41:8

\$50,000 54:12

< 0 >

071173 62:1

< 1 >

1 62:1, 1

1.2 15:2 36:19, 24

1.25 16:6

1.5 15:4, 5, 5 16:7

32:15, 18 40:11 59:5

1015 1:1

106 2:1

110 16:9

11th 24:25

120 1:1

125,000 10:3

13 1:1

13th 3:2

15 11:20

150027 2:1

17 36:16 62:1

18-006752 1:1

18-6752 4:22

< 2 >

2 62:1

20 38:23

2007 36:9, 15

2020 1:1 3:2 36:16

62:1

2021 62:1

2180 1:1

239 1:1, 1

25 36:17 56:6

250 42:14 55:4

27 62:1

286.0118 4:7

< 3 >

3:08 1:1

30 56:6

30-day 34:9

32301-7740 2:1

334-1411 1:1

334-1476 1:1

33901 1:1

33915 2:1

< 4 >

4:12 1:1 61:14

< 5 >

50 16:8

50,000 56:3

54 54:13

< 6 >

60 6:19 62:1

< 8 >

820 2:1

< A >

abide 14:7

ability 6:14 20:9

able 14:8 27:3, 7, 15

28:25 34:21 35:2

48:1 53:6 58:23

absolutely 9:4, 12

11:21 13:21 15:12

24:6, 12 25:10, 18

34:11 39:22 43:4

52:12 53:20

accept 10:12 17:16

accurate 54:17

accurately 62:1

accused 58:7

acre 10:4 13:4, 4

16:5

acreage 16:4

acres 10:8 16:4

act 25:23 51:6

action 9:2 14:2 24:3

26:16

actual 38:18

add 13:5 50:5, 14

adding 16:3

addition 40:23

additional 50:5

address 7:21 8:9, 19,

22 13:19 33:23

addressed 34:1

50:13, 15

addressing 30:19

Administration 25:23

administrative 5:1, 4

6:9 18:16, 17 19:15

25:3, 8, 20 26:3, 14,

17 29:20 30:13 41:5,

17 60:18, 20

administrator 18:15

advanced 9:1

adverse 19:24 20:20

23:23 42:4

advised 37:24

aerial 49:18

affect 22:23, 24 38:7

agenda 57:3

agent 51:6

ago 11:20 15:2 43:1

agree 7:19, 21 13:22,

23 29:3, 17 30:21

48:4 60:2

agreed 11:23

agreement 9:17 11:2

28:8, 13

agreements 40:25

ahead 9:6 10:25

34:13 43:6 54:23

59:24

ahold 11:22

ALJ 19:23

allegiance 3:7, 8

allow 19:11 43:18

46:12, 21

allowed 25:10 46:10

47:8, 20, 22

allows 25:21

allude 34:21

alternative 14:12

alternatives 5:6 30:5

amazing 9:12

amend 17:1 40:16

60:4

amended 14:24

amending 17:4

amendment 10:11

32:11

amount 15:20 16:4

37:25 48:25 55:9, 14,

25 59:5, 14

analysis 12:24

analyze 8:17 38:15

analyzing 57:18

ancillary 22:7

anew 51:25

announce 3:12

annual 36:22 37:1

answer 29:17 39:18

57:24 58:22

answered 31:8

anybody 22:21 31:1

anyway 6:18 7:15,

17, 21 21:20 31:24

47:15

apologize 34:17

appeal 6:15 7:11, 17

14:13, 14 16:24

20:12 21:3 26:5, 18

30:9 32:9 34:25

appealed 20:10

appealing 53:25

APPEARANCES 2:1

appears 53:21

appellate 24:13

26:15, 23, 24 27:17, 19

applicable 21:2

application 7:16 8:3

10:12 14:23, 24, 25

17:1, 4 32:10, 12, 13

35:5 43:16 51:18, 19

54:2 60:4 61:9

apply 8:1, 2 16:4

applying 53:15

appointed 58:3

approval 21:25

approve 57:4

approved 28:1

approximately 44:14

area 8:7 26:10 50:7

areas 23:14 59:18, 20

argue 13:19 21:17

27:11 40:5

argued 50:10

arguing 21:20 29:9

argument 17:5, 8

arguments 20:4
21:13
arm 21:10, 11, 12
arms 21:22
Article 30:14
aside 40:24 59:8
asked 3:13 35:14
assign 13:5
Assistant 4:12
associated 40:19
ASSOCIATION 1:1
4:21 27:3
assume 14:6 15:24
39:13 40:16 43:15
assumes 7:5
assuming 7:8, 25
34:24 43:16 61:6
assure 61:1
attacking 26:8
attempting 58:16
attend 47:19, 20 62:1
attendance 4:14
attending 4:9
attitude 60:6
attorney 4:6, 12, 13,
13, 18 5:3 9:5 47:20
55:9, 13
ATTORNEYS 2:1
ATTORNEY'S 2:1
15:8 16:7 20:12
authority 34:2
authorized 62:1
automatic 24:1
available 5:6 14:2
Avenue 2:1 33:7
avenues 29:24
aware 4:25 9:23
47:16, 18 54:9

< B >

back 6:18 7:14, 16
8:25 11:24 14:3, 19
22:4, 19 24:11 30:17,
18 31:21 35:4 36:9
45:9 49:9 51:4
55:17 56:4, 7, 15
backup 30:23 33:17
40:19
bad 20:18 51:2

bananas 28:2
bands 35:22
bank 13:9
barrier 27:22 28:1,
14
based 8:17, 21 47:10
59:6
bases 10:10
Basically 42:11
basis 45:15
bearing 35:9
began 42:21
believable 20:8
believe 33:13, 14
41:13, 18 59:11
believed 20:5, 21
benefit 14:17 57:22
benefiting 9:9
benefits 28:15
benefit-the-public
9:10
best 7:13 30:16
31:13 33:7 40:2
43:22
bets 44:6
better 50:7, 21 56:10
Beyond 9:25
big 39:3 47:12 49:12
bigger 29:16
biggest 11:17 51:11
biota 12:13
birds 12:14
bit 7:10 11:15 12:1
14:9 22:4 34:9, 22
52:2
bite 11:24
blame 5:11
blunt 7:12
board 55:21 61:10
boat 35:16 36:7
boats 46:1, 2
body 50:1, 14
BOLVES 2:1
borrow 11:9
bottom 5:12, 14 9:14
20:5, 17 27:11 38:20
40:6
Boulevard 1:1
bound 19:22

Box 2:1
breach 38:23
breaches 49:16
break 13:25 37:13
bring 36:20 37:6
52:14
bringing 11:10 48:12
brings 13:7
broad 39:20
budget 59:2, 7
build 35:18 36:10
building 37:8
bumble 44:8
Burrell 1:1 62:1, 1
buy 10:2 59:23

< C >

calculate 12:9
calculating 12:25
call 3:10, 11, 15
37:12 38:23 58:6
called 8:22 28:7
36:11
calling 28:16
Caloosahatchee 11:4
canal 15:24 51:5, 14
canals 50:18 51:7
cap 56:2
capacity 37:20
Cape 1:1, 1, 1, 1 2:1,
1, 1 4:21 61:8
capped 54:11
capping 54:16
caption 62:1
cards 21:20
care 56:7
Carioscia 2:1 3:14
4:10 17:20, 21, 24
18:2, 6, 10, 14, 17
19:5, 10 20:22, 24
53:20
CASE 1:1 4:20, 22
5:18 7:8 8:19 9:1
10:1, 8, 17 11:16
14:20 15:18 16:2
17:19 24:10 27:4
32:21, 23 35:23
38:16 39:24 40:1
43:22 50:22 52:25
54:19 55:10 60:22
cases 34:13 53:4
cause 17:12 62:1
cents 14:10
certain 13:22 20:15
47:8 59:14
certainly 47:22 59:20
certify 62:1
Chambers 1:1 61:13
change 5:25 16:16
17:9 20:7, 9 38:21
39:9, 11
changed 23:8, 9, 10
changes 17:10
changing 20:12
charge 37:23
Charlotte 11:10
cheap 10:4
chiefs 58:2
Chiquita 4:23 35:17
choir 23:3
choose 16:24
chose 31:19
circle 14:3
circuit 26:6, 15, 22
CITY 1:1, 1, 1 2:1, 1,
1 3:2, 10 4:11, 12, 12,
21 8:24 9:1 21:9
27:13 29:7 34:21
55:13 61:8
CIVIC 1:1 4:21 27:2
Clarification 16:20
clarify 42:12
clarity 48:9
Clark 42:25
clean 51:7
cleaning 9:21
clearly 11:24
Clerk 3:10, 11, 17, 19,
21, 23, 25 4:2, 4
client 4:6, 18 47:20
clock 6:19
close 47:12 55:6
closed 4:6, 16, 18
College 2:1
combat 29:23
come 3:3 8:22 9:3
11:24 14:14 30:20
32:19, 20 35:4 39:10

45:9 55:6, 17 56:4, 7, 15 59:8
comes 17:14 21:18
 50:20 53:10, 24
 55:21 57:13
comfortable 5:24
 13:21 20:11 24:10
 30:2 33:18 48:3
coming 3:15 22:25
 49:5, 7, 8 52:4 55:22
Comment 55:1
Commission 62:1, 1
commitment 60:17
compare 14:11
complain 58:14
complete 41:6
completely 19:21
 23:25 25:9 32:12
concern 40:13 50:16
 51:23 60:12
concerned 19:17
 35:6 40:10 43:23
 60:10
concluded 61:14
condition 43:23 46:4
conditioned 41:21, 23
conducting 4:6
consider 35:2 59:3
consideration 49:21
considered 45:5
 49:19
consistently 50:17
constitute 62:1
continue 52:16 56:14, 18
control 6:25 33:11, 12
controls 7:2
conversations 50:3
CORAL 1:1, 1, 1, 1
 2:1, 1, 1 4:21 61:8
correct 17:22 18:4
 22:2 24:6 52:21
Cosden 2:1 3:19, 20
 4:11
cost 14:11 16:18
 35:12, 18, 19, 24
 36:23 41:7 44:9, 13
 57:2 60:9, 11

costs 34:23 37:2
 40:19 44:7 57:6
Council 1:1, 1, 1 2:1
 3:2 4:5, 24 5:6
 34:19 35:2 38:1
 53:21 56:23 57:4
 59:9 61:13
Councilman 17:20
 21:24 31:3, 6
councilmember 2:1, 1,
 1, 1, 1, 1 3:12, 14, 19,
 20, 22, 24 4:1, 3
 10:20, 23, 24 11:1, 8,
 12 12:2, 4 17:21, 24
 18:2, 6, 10, 14, 17
 19:5, 10 20:22, 24
 22:19 23:4, 16 27:21
 28:7 31:5, 7 32:1
 33:2 35:11, 12 37:9,
 14, 15, 16, 19 38:6, 9
 40:10 42:11, 16 43:2,
 5, 21 44:11, 16, 20, 21
 45:11, 15, 17, 20, 22
 46:11, 15, 19, 22, 24
 48:8, 11, 17 49:11, 24
 50:9, 17, 20 51:1, 15,
 16, 17, 21 53:12, 19,
 20 57:23 58:9, 18, 21
Councilmembers 4:9
counsel 11:22
count 11:13
County 11:10 62:1
couple 17:12 27:13
 32:7 38:22 44:12
course 10:18 30:2
 36:23
courses 14:2
COURT 1:1 4:14, 15
 26:2, 15, 22, 24, 24
 28:3
courtroom 25:6, 11
 60:22
courts 26:15 28:21
cover 10:10 33:14
covered 60:20
Coviello 2:1 3:1, 9,
 16, 17, 18 4:5, 11, 19
 10:24 12:2 17:20
 21:23 22:13, 17
 24:20, 24 25:2, 5, 11,

25 31:3, 6 32:14
 35:11 37:14 38:4, 8
 45:19, 23 47:7, 10
 49:15 51:16 52:9, 18,
 24 53:6, 17 54:5, 24
 55:3, 13 56:19 57:10
 58:25 59:14, 17 60:6,
 16 61:4, 10
Craig 2:1 4:13 5:3,
 8 14:4, 15 21:15
 55:16
crap 28:4
creates 49:1
creatures 12:14
credibility 19:7
credible 19:16
credit 11:19 22:6
 54:13
credits 9:24 10:3
critique 6:6 12:20
critiquing 6:9
Cultural 1:1
curious 44:12 46:19
current 14:24 17:3
 45:25 46:5
curtain 21:10, 21
cut 22:11, 20
Cvarn@mansonbolves.
com 2:1

< D >

daily 45:15, 17
damn 49:3
DATE 1:1
day 8:16 12:20
 13:19 61:2
days 6:19
DCA 26:25 27:8
dead 32:9
deadlines 6:22, 22
deaf 34:4
dealing 34:13 57:9
debate 50:4
decide 7:7 10:7 33:4
 40:16 43:6
decides 38:2
decision 6:1 7:4
 19:19 35:7 53:24
Defendants 1:1

defending 21:3
defense 45:14
delineates 57:1
Delores 4:12
denied 32:13
denying 29:5
DEP 1:1 4:22 5:20
 10:13 11:18 16:21,
 25 17:2, 14, 21 18:3,
 10, 20 19:5, 11 20:24
 21:7, 8, 11, 12, 22, 25
 22:13 26:12 28:11
 29:5, 5, 10, 15 30:1
 31:9, 11, 14, 25 32:8
 43:16 50:10 51:24
 52:15 56:1 58:1
department 5:25
 6:20 7:2 12:25 18:9,
 24 20:6 24:14 25:23
 44:24 46:21
depending 8:3 56:16
depose 15:15
depositions 15:15
 16:15
DEP's 20:25
deputy 22:9
describe 14:25
described 33:9
designated 26:16
determination 8:21
 18:25 19:24
determinations 8:17
determined 19:2
 23:21
develop 52:3
development 13:6
diagnosis 44:3
difference 58:1, 4
 60:1
differences 15:1
different 12:15 16:22
 18:8 19:20, 21 26:9
 27:17 41:5 53:7, 8
differently 5:13 24:11
difficult 24:13, 14
 46:1
digitally 62:1
direction 23:12
disagree 58:11

disagreed 8:10 19:8
 disagreement 29:14
 disappointed 5:11
 disaster 59:12
 discharging 23:12
 discretionary 59:9
 discuss 55:14
 discussions 22:6
 distinguish 32:11
 distribute 6:5
 diverted 59:12
 division 53:2 58:2
 DOAH 5:1 27:19, 20
 documents 55:9
 doing 9:5, 8, 12, 16,
 22 28:16 30:5 34:3
 55:19, 22 57:7, 21
 60:17
 dollar 32:24 55:14
 dollars 14:10 59:15
 Dolores 2:1
 DONALDSON 2:1
 door 34:5
 drive 51:4
 drives 8:25
 drop 39:4
 duct 35:22
 due 55:1
 dumping 11:3
 dynamic 23:10 29:16
 38:21

 < E >
 earlier 50:2
 early 11:16
 ears 34:4
 easiest 22:18
 East 2:1
 easy 19:23 27:20
 59:23
 ecologist 8:6, 8, 16, 20
 9:25 10:7 12:5, 9
 15:11, 12 22:21
 28:10 32:19, 25
 38:10 43:8 48:12
 51:18 52:3 55:20, 21
 ecologists 12:17
 ecologist's 56:8, 14
 ecology 48:14

economy 28:15
 Ecosystem 28:8
 egregious 34:16
 eight 13:6
 either 10:13 18:25
 32:2 41:4
 elected 27:9
 elements 19:14
 EMA 28:8, 15
 emphasizing 14:21
 endeavor 54:17
 engagement 56:23
 engineering 36:12
 engineers 28:11
 ENR 36:12
 ensue 43:24
 entirely 47:18
 entity 19:17
 environmental 9:2
 12:6 48:13
 environmentalist
 28:11
 equated 13:9
 equation 13:11
 ERP 42:3
 errors 12:21
 especially 46:1 56:21
 Esquire 2:1, 1, 1
 essentially 7:8
 estimate 36:4
 estimated 4:8 36:15
 57:2
 event 48:5 54:2
 everybody 15:14
 47:18 60:21 61:10
 everybody's 60:12
 exact 35:14
 Exactly 33:9 40:20,
 21, 22
 example 9:17 35:4
 46:7
 excused 3:13 4:4
 EXECUTIVE 1:1
 61:14
 exempts 25:22
 existing 35:18, 20, 24
 expenditures 56:23
 expensive 28:21

expert 12:18 20:1, 2,
 6, 6 30:22 33:12, 15
 40:11, 14, 18, 20
 expertise 12:12, 22
 experts 15:7, 10 16:7
 20:21 40:21, 22, 23,
 24 41:2
 Expires 62:1
 explore 14:9
 extent 17:5 57:5

 < F >
 facilities 37:23
 facing 14:12
 fact 7:20 9:4 18:23
 19:16 20:10 38:22
 54:12
 factor 11:17
 facts 19:4, 22
 fail 41:19
 failure 34:7
 fair 11:15 54:20
 fairly 7:9 15:23, 24
 27:20 53:3
 falls 5:12 44:10
 far 9:1 12:5 16:8
 32:3 49:7
 farms 51:11
 fashion 31:12
 faster 37:22
 fauna 19:25 22:24
 favor 17:25 19:13
 21:1, 14, 17, 19, 21
 54:3 57:13
 FAX 1:1
 feel 9:14 14:25 19:6
 20:10 30:2 33:18, 18
 40:1
 fees 15:8 16:7, 10, 14
 20:12 41:25 54:11,
 16 55:25 56:2
 fell 34:3 44:16, 17,
 18, 22
 felt 61:3
 FEMA 59:3, 8, 10, 19
 Ffolkes 53:4
 fifty 42:17
 fighting 25:7
 figure 16:5 32:22

file 14:22, 24 17:1
 35:4 56:1 61:6
 filed 21:4
 filing 53:9 54:2
 filings 5:19
 fill 12:7
 final 6:1 14:5, 14
 18:7 19:19 20:25
 21:12 24:20, 23, 24
 26:19, 20 32:8 52:11
 57:12 61:7
 find 19:13 21:19
 41:13, 16 49:5 59:4
 findings 17:6 18:23
 20:19
 finds 18:18
 fine 44:25
 fined 45:8
 fines 44:18, 21, 24
 firm 54:22 57:8, 21
 First 1:1 7:11 11:18
 24:2 26:20 28:20
 29:6 31:14, 20 33:3
 34:15 38:14 55:18
 fish 12:13 19:25
 22:23
 five 10:8 42:13
 fix 45:1, 9
 fixing 29:9
 flat 17:15
 flip 30:3 34:6
 Florida 1:1, 1, 1 2:1,
 1 4:7 62:1, 1, 1
 flow 23:22, 25 38:24
 39:2 47:10, 11 48:14,
 23
 flows 45:24 47:3
 51:3
 focused 12:13
 follow 17:18 20:23
 30:4 52:13
 followed 22:25
 following 4:17
 foot 39:6 40:2
 force 23:17 29:3, 18,
 19 48:25
 forefront 33:24
 foregoing 62:1
 forever 32:5

forewarn 33:1
forgot 47:14
forking 42:13
form 12:11 31:12
FORT 1:1, 1 4:15
 9:18 11:3, 5 22:1
forth 22:21 47:1
forward 5:16 6:3, 18
 7:3, 6 8:12 10:12
 16:19, 21 17:2, 7, 11
 32:22 33:19 35:10
 52:10 61:5
found 19:23 21:14
 24:7, 15
four 14:1 43:1, 3
FPR 1:1
frame 37:17 42:20
 43:6
frankly 8:13 25:20
free 14:25
front 23:11 41:4, 25
full 37:20
fully 62:1
functional 35:20, 24
 36:6 37:9, 12
functioning 37:20
fund 59:4, 12, 13
further 39:23 47:23
 54:6 56:16
future 34:23 57:4

< G >

gate 44:10, 16, 17, 17,
 22 45:4, 12 46:9, 12,
 16
gates 36:1, 3
general 59:13
generally 19:22
geologist 48:13
getting 26:7, 11 28:2,
 18 48:23 53:8
GG 62:1
give 5:21 16:5, 17
 32:21 39:20 49:4
 60:16
given 6:2 15:18, 23
 31:5 38:17
giving 11:19 22:6
glad 60:25

go 4:16 6:3, 18 7:22
 8:12, 16, 20, 25 10:1,
 24 13:2, 6, 18 15:14,
 17 16:18, 21, 24 17:2
 21:17, 18 22:19 23:1,
 13, 22 24:14 25:6, 11,
 16 26:1, 5, 6, 12
 29:12 30:7, 17 31:23
 32:15 34:5 36:16
 39:10, 22 40:20
 47:13 54:23 59:23
goes 10:12 18:24
 19:21 23:2 26:24
 32:8 60:14
going 5:20, 20 6:24
 8:18, 20 9:18 10:16,
 20 13:13, 15, 20
 14:16, 17 15:2 16:12,
 14, 17, 18 17:7 18:18
 21:2, 19 22:1, 4, 14,
 23, 23 23:21 24:4, 14,
 20 26:9 28:13 29:25
 30:3, 8, 16, 19, 25
 31:1, 8, 14, 20, 21, 23
 32:17 33:3, 4, 13, 17,
 18 35:9 38:11, 14, 15,
 18, 20, 21 39:1, 7, 9, 9,
 10, 16, 19, 19, 20, 21
 41:12 42:12 43:10,
 11, 12, 13 44:5, 6, 9,
 12, 25 45:8, 25 49:2,
 6, 8, 9, 13, 13 50:8
 51:2, 4 52:1, 9, 16
 55:11, 18, 19 56:10,
 22 57:5, 15, 20 58:21
 59:15 60:9 61:5, 5, 7
good 5:21 6:17 9:8,
 14 24:18 57:6 60:19,
 19
gotten 40:25 60:23
governor 58:3
gradual 39:2
grasp 56:10
great 57:13
greater 19:1
grief 17:13
Griffin 2:1 4:13
 37:4 42:24 46:4
ground 57:11, 17

guarantee 16:10, 13
 39:23, 25 40:8 41:10
 42:8
guaranteed 41:14
guess 20:23 26:6
 61:4
guessing 38:17
guesstimate 10:6
guesstimating 15:23
Gunter 2:1 3:21, 22
 4:10 31:6, 7 32:1
 33:2 37:9 48:8
guy 25:6
guys 9:19 12:16
 54:18, 19 59:25

< H >

half 43:1
hand 43:13 62:1
handle 49:22 53:4
handled 5:4
handling 54:14
hands 53:18
Hannon 6:7 27:4, 4
happen 6:24 8:18, 21
 22:15 33:23 34:12
 40:8 57:15 58:13
happened 29:24
 33:25 34:6, 15 46:18
 60:3
happens 14:7 22:10
 32:2
happy 26:19 55:17
harder 27:18
harm 29:22, 22
 30:22, 23 31:9
harped 12:1
hear 52:25
heard 49:16 60:19
hearing 5:4 7:15, 15
 15:10 17:22 21:6
 24:21 25:3, 8 30:18
 33:25 43:18 48:2
 52:23 53:22, 25
 56:18 57:10 60:18
 61:6
Hearings 25:24 26:3
hedge 44:6
height 39:3

held 17:6
Hello 5:9
hereof 62:1
hereto 62:1
hereunto 62:1
hey 31:20
high 22:9 48:24, 25
hike 8:15
hire 8:6, 16 32:19
 38:10 52:2
hiring 15:10 42:1
historic 17:19
hit 34:17 50:16
 57:11, 16
holding 36:3 43:13
hole 38:25
home 9:14
honest 32:6 55:7
honestly 16:9 45:13
Honor 3:11
hope 17:18 43:14
 55:6
Hopefully 20:17
 57:12
hour 4:8
hourly 57:1
hours 47:25
huge 47:11 52:5
hurricane 46:8
hurt 16:10, 11

< I >

ideas 16:18
iffy 50:11
ignore 23:12
imagine 18:2 39:16
 53:15
immediately 38:3
impact 17:11 38:22
 39:14 59:1
impacts 8:23 10:5
 13:15, 20 15:24
 19:25 20:20 23:23
 24:1 33:15 38:18
 39:22 41:2 42:4
impair 50:4
impaired 50:1, 5, 14
implications 18:23
implied 23:22 24:8

important 13:23
 48:14
improperly 11:25
 20:13 58:7
improvement 50:8
inadvertently 54:12
include 15:7, 9, 13
inclusive 62:1
incorporate 9:16, 24
incurred 16:9, 13
incurring 34:23
 55:24 57:6
indicated 3:14 36:11
 59:7
individually 27:5
inflation 36:14
influence 22:14 58:8,
 9
influenced 39:5, 8
information 8:5
 47:21, 24
infrastructure 36:13
initial 36:19
injecting 11:5
inquired 47:23
integrity 36:2
interested 28:12
 34:20, 24 53:23, 25
interesting 42:2
interrupt 48:7
introducing 41:4
invocation 3:4
involved 8:14 21:12
 22:3 46:17
issuance 41:22
issue 6:20 9:20
 13:19 17:16, 16 20:1
 22:5, 7 23:5, 10, 20
 25:19 29:8, 13, 18
 34:8, 18 39:3 46:3
 47:4, 6 49:22, 25
 50:13 51:12, 13 52:5,
 6
issued 26:8 41:24
issues 6:15, 16 7:18
 17:12 21:11 30:19
 32:7, 8 45:10 55:23
its 10:17 30:2 60:5

< J >

Jackie 1:1 62:1, 1
Janicki 12:5 20:1
January 1:1 3:2
 62:1
Jessica 2:1
job 58:12 60:20
jobs 58:10
Joe 2:1
John 2:1, 1, 1 4:11
 44:6 47:16 59:24
joined 18:11
judge 5:1 7:20 8:10
 12:1 13:24 18:16, 18
 19:15 23:9, 19 30:13,
 14 33:13 34:1 41:5,
 17 52:19, 25 53:4, 5,
 7, 9, 10, 13, 15, 16
 60:24
judges 28:4, 22 30:11
judge's 6:10
juncture 5:7

< K >

keep 32:2 36:18
 43:24 44:1, 4 45:11,
 20 46:12 48:1
kill 30:4
kind 9:10 15:6
 17:12 25:12 26:2
 31:7, 13, 15, 21 43:25
 44:18, 21 45:5 47:21,
 24 50:11
Kling 35:15
know 5:13 6:5, 11,
 24, 25 8:14 9:4, 9
 10:5, 15 15:13, 19
 17:17 23:4, 5, 7, 24
 28:3, 4, 11 29:21, 21
 30:3, 6, 10, 13, 14, 24
 31:10, 14 33:12 34:9,
 10, 14 36:1 37:22
 39:14, 16, 18, 21 41:8
 42:21 43:17 44:3, 7
 46:4 48:17, 21, 24, 25
 49:2 50:24 52:7
 54:10 55:12, 18 56:6
 57:22, 24 58:10, 12,
 14 60:6, 17 61:3

knowing 55:7

< L >

labor 36:14
land 48:24
Large 1:1 62:1
law 5:1 6:10 17:19
 18:16, 18 19:15 25:7,
 22 26:2 30:13 41:5,
 17 47:21
lawsuit 26:2
lawyers 28:4, 22
learn 24:12
leave 14:7 35:2 40:4
 45:4 46:7, 9, 25
 47:11 49:3 51:19
 53:10
LEE 62:1
legal 18:22 20:4
 25:9, 12 52:6
legally 42:22
length 4:8
letter 56:24
letting 16:21 29:22
 30:1 33:24
level 21:8, 9 25:5, 14
 26:22 27:17, 17, 18,
 19 39:4
levels 24:2
license 25:7
light 56:21
lights 47:13
limited 20:14
line 5:12, 14 9:15
 20:5, 17 27:11 38:20
 40:6, 17, 18
lines 41:6
litigation 4:20
little 7:10 11:15
 12:1, 14 14:9 15:16,
 16 23:14 29:22 34:9,
 22 51:13, 15 52:2
lived 27:13
LLC 1:1
load 9:18 50:11
loading 50:6, 12 51:9
local 22:13 52:25
Lock 4:23 5:2 7:25
 14:8 16:1 17:25
 18:4, 7, 11, 19, 21

19:12, 13, 16, 18
 23:16, 18 26:12 29:1
 30:7 32:4 33:5, 6
 34:20, 22, 25 35:3, 13,
 17, 18, 19, 20, 24 36:7,
 10, 15 37:8, 17 38:2,
 3, 5 44:5 46:2, 5
 49:3, 17 50:7 51:3
 52:20 53:18, 22 60:8,
 23
locks 36:5 43:23
Lois 2:1
long 15:23, 24 42:6,
 18 45:11, 16 50:4
longer 6:24 11:3
look 5:23 8:20 10:2,
 5, 6 13:2, 3 39:11
 43:12, 19, 21 57:2
 59:15, 18, 25
looked 11:20 39:6
looking 7:3 10:7, 14
 12:10 24:11, 12
 39:17 43:2, 25
looks 22:22 36:13
lose 6:14 42:7
lost 6:16 50:12
lot 5:11, 23 6:4, 5
 7:19 16:13, 16 18:3
 27:12 48:21 51:8
 57:19 58:11
love 58:23
lower 21:9 38:24
ludicrous 9:4, 13
 13:16 34:11

< M >

Madam 3:10 55:13
maintain 35:13 60:10
maintenance 35:3
 36:23, 25 37:2, 7, 25
making 44:8
Management 28:8
Manager 2:1 4:11
 34:21
mandatory 60:3
mangroves 39:15
 49:17
MANSON 2:1
March 24:24
Marilyn 2:1

mark 3:13 37:23
 44:2
materials 36:14
mathematical 13:11
MATLACHA 1:1
 4:21 21:4 23:2, 6
 27:2, 15 28:2, 23
 49:13, 14 50:22
 51:10
matter 25:19 41:18
 54:13
maximize 46:15
maximized 46:11
maximizing 47:25
Mayor 2:1 3:1, 9, 16,
 17, 18 4:5, 11, 19, 24
 10:23, 24 12:2 17:20
 21:23 22:13, 17
 24:20, 24 25:2, 5, 11,
 25 31:3, 6 32:14
 35:11 37:14 38:4, 8
 45:19, 23 47:7, 10
 49:15 51:16 52:9, 18,
 24 53:6, 17 54:5, 24
 55:3, 13 56:19 57:10
 58:25 59:14, 17 60:6,
 16 61:4, 10
mayor's 47:2
mean 9:20 11:21
 13:13 15:16, 21, 23
 16:8, 16 25:6 38:12,
 19 41:19 48:6 52:15,
 18 57:12, 18
means 14:7 46:24
meant 33:20
measurements 49:20
mechanism 45:6
meeting 3:2, 3 4:8
memo 7:5
Menendez 2:1 4:12,
 24 13:25 15:5 20:23
 21:6 24:23 26:18, 25
 27:2, 7, 25 34:19
 36:18, 22 37:3, 5
 40:13 41:11 42:9
 47:16 48:6 53:21
 54:9, 21 55:16 56:17,
 20 57:1 61:9, 12
mentioned 30:6
mentioning 50:2

million 10:15 15:2
 32:15 35:19, 25 36:4,
 8, 16, 17, 19, 24 37:4,
 4, 5, 6 41:8, 22 42:13,
 16 59:5 60:7
mind 53:14
minimal 44:9
minor 17:12
minute 14:1 15:2
missing 8:7 51:3
misunderstanding
 6:12
mitigate 33:11 36:7
 41:1 42:3 60:11
mitigated 30:23
mitigation 8:22 10:2,
 3 13:9 15:21 33:16
 40:18, 25 41:6, 20, 23
 42:17 59:23
modification 8:2 9:17
modified 11:23
modify 7:16
moment 3:4 23:13
money 7:13 14:17
 33:10 38:1 40:24
 41:15, 25 43:25 59:3,
 8, 19
moneys 59:8, 11
monthly 45:16
months 34:10 43:17
motion 32:3 34:1, 12
 53:9 54:8
move 7:5 61:5
mover 12:8
moving 5:16 7:24
 17:11 32:22 33:18
MYERS 1:1, 1 4:15
 9:18 11:3, 5 22:1

< N >
nailed 20:11
narrow 38:25 45:23,
 24
navigate 46:2
near 34:23
nearly 34:16
necessary 40:6
need 7:3 8:1, 2, 6, 16,
 19 12:24 13:10
 16:15 28:25 30:25

32:17, 18, 19 33:10
 35:6 40:15 41:11
 43:8, 9, 10 45:1, 8
 52:7 55:14 56:21
 57:25 60:13 61:12
needed 7:17 24:9
 58:22 60:21
needs 13:12 40:14
 43:16
negative 39:14
negotiating 28:22
Nelson 3:13
net 28:15 50:8
never 23:20 39:25
 41:10 52:19, 20, 20
 53:14
nevertheless 11:25
new 7:14, 15 8:2, 5
 14:22 17:1 30:18
 32:10, 11, 12 35:4
 43:16 51:18 53:15
 54:2 56:23 61:6, 9
news 36:12
nitrogen 51:9, 13, 14
nonsense 29:10
Normally 15:17
North 11:5 15:25
 27:22 35:18 39:17
 43:11 48:22 49:16
 50:22
northwest 28:17
Notary 1:1 62:1, 1
notion 54:1
nuance 17:2
nullity 35:8
Number 4:22 17:10
 36:9 47:25 50:11
 53:3 54:25 55:3
 56:6, 9, 12, 13 62:1, 1
numbers 13:5 15:22
 24:17
numerous 22:6
nuts 9:1

< O >
objected 34:3
obviously 7:7 8:10,
 14 13:21 58:15
 59:24

occurred 4:17 11:19
 15:25
odds 24:17
offends 31:11
offered 12:17 41:1
Office 2:1, 1
offset 33:15
offsets 13:1
offsetting 42:6
Oh 37:3
Okay 3:1, 16 14:13
 18:6 19:15, 25 21:6
 28:23 37:5 38:19
 46:22 47:1 48:6
 49:24 58:9, 19 61:11
old 32:12
Oliver 42:24, 25
once 32:20 34:4, 8
 35:25 55:21 60:1
ones 9:19 41:3
ongoing 54:22
open 39:1 45:4, 6, 12,
 20 46:7, 9, 12, 13, 15,
 25 47:8, 11 48:1
 49:3, 4 51:3
operate 35:13
operating 43:25 44:1
 46:25
opine 26:10
opinion 31:16 33:7
opinions 12:12 16:16
opportunity 26:12
 49:4
opposed 26:3 33:24
opposes 19:1
option 10:16 17:3, 3
 20:13 26:4, 5
options 5:16 7:9, 24
 14:6 20:14
order 3:3 4:25 5:10
 6:10 13:17 14:4, 5,
 14 20:25 21:18
 24:23, 24 26:19, 20
 32:8 54:3 57:12
 61:2, 7
orders 21:12 60:15
outside 8:16 50:21
overanalyzing 57:19
overturn 24:16

overturned 20:18

< P >

p.m 1:1, 1 61:14
 Page 62:1
 pages 62:1
 paid 54:12, 18
 palm 51:11
 Paperclips 35:21
 parallel 35:18 36:7, 10
 Park 1:1
 part 12:6 57:18 60:2
 particular 42:25 45:18
 parties 28:12
 Pass 23:2 49:13, 14
 path 31:23
 Paul 35:15
 pay 44:18, 22 60:8
 penalties 6:22
 penalty 34:7
 pending 51:25
 people 5:12 13:22 15:16 25:17 47:5
 perceived 58:16
 percentage 39:15
 periods 46:6
 permit 5:2 8:1 9:17 11:18 26:7, 11, 13 29:15 41:21, 23 42:3 45:3, 10 46:5 60:2
 permitting 21:13
 person 7:1 9:11 12:13 26:9 32:20 33:22 48:13
 personally 9:11 26:8
 persons 4:9
 petition 40:17
 petitioners 17:6
 PHONE 1:1
 photographs 49:18
 physical 15:6
 pick 56:6
 pictures 52:21
 pieces 44:12
 pipeline 60:1
 pit 11:10
 PLACE 1:1 35:3

36:3, 19 57:3 60:5
 Plaintiff 1:1
 plaintiffs 27:5
 plan 55:21
 planning 54:15
 plants 12:10
 Please 3:3, 6, 9 14:25
 pledge 3:6, 8
 plus 16:9 41:2
 pocket 54:20
 point 6:6 7:3 13:11 16:5 18:11 19:22, 23 28:13 32:5 35:8 42:19 44:24 47:2 50:6 52:15 55:23 56:15 59:10
 pointed 6:16 7:20 20:16
 points 19:14
 poll 38:4
 polluted 50:22
 polluter 51:11
 ponds 51:6
 portion 29:8
 position 6:11 21:3
 possible 6:23 41:15, 19 51:17
 possibly 15:11
 Post 2:1
 posture 5:17 20:18
 potentially 14:2 21:3 26:1 59:17
 practice 25:22
 preaching 23:3
 predicted 46:8, 9
 preference 10:22
 prematurely 31:11
 prepare 13:17 24:19 56:23
 prepared 13:18 32:18 33:10 34:14
 present 2:1 4:4
 presentation 8:8
 preserve 48:22
 pressure 23:17
 pretty 5:21 16:11 47:6 49:1
 prevalent 17:17
 prevented 11:5

price 10:14
 primary 15:11
 pristine 13:9
 probably 9:22 10:8 11:17 14:5 21:1 38:22 39:5 45:7, 9 52:4 54:10 56:21 57:24
 problem 24:6 27:22 45:19, 23 48:18, 19, 20 49:12, 23
 problems 12:11 44:23 48:21
 procedure 52:13
 proceed 29:23 43:7
 proceeding 25:12
 proceedings 4:17 6:13 56:16 62:1, 1, 1, 1
 process 8:4, 13 15:10 19:21 22:4 25:20 26:14, 17 28:8, 9, 24 29:4, 20 30:18 42:18, 22 43:15 51:19
 Professional 1:1 33:7 62:1
 project 36:13 60:4
 projects 11:19 59:25
 property 13:7
 proposals 10:2
 propose 10:1
 proposing 30:21
 proved 8:9
 provide 13:4 47:21
 provided 6:7
 provision 25:21
 Public 1:1 9:10 62:1, 1
 pull 31:21
 pulled 28:14
 purpose 21:16
 pursuant 4:7
 pursue 8:13
 push 23:5 43:18
 pushing 38:25
 put 28:24 30:14 41:15 54:8 56:12, 13 60:5
 putting 59:7

< Q >

QR 25:23 55:8
 quality 12:18 49:22, 23
 question 5:19 10:21 20:7 25:2, 25 29:17 31:8, 9 33:2, 5 35:14, 15 38:7, 9 42:18 49:15 53:12 57:23
 questions 31:4
 quick 32:7 33:20 38:4
 quite 6:23 7:11 22:4 32:5
 quote 30:11

< R >

raise 6:15
 raised 22:5 23:20 38:16 39:3
 range 44:7
 rate 57:1
 rates 36:14
 read 12:20
 ready 56:1 61:6
 real 14:17 30:11 32:7 33:20
 really 10:7, 9 11:17 22:13 29:25 37:20 39:6 41:9 42:13 56:9
 rear 11:25
 reason 29:4, 6 54:23 57:14 60:24
 reasonable 15:20
 reauthorize 56:16
 recall 29:15 45:13
 recited 3:8
 recommend 7:12 8:12 10:14 14:15 31:19
 recommended 4:25 5:10 14:4 21:18
 recommending 26:21
 reconvene 61:12
 record 36:12
 recuse 53:9
 redo 32:17

<p>redone 16:15 reduce 38:24 re-file 31:22 32:2 35:1 re-filing 17:4 regarding 6:6 20:5 59:1 regardless 8:12 Registered 1:1 62:1 regroup 31:21 reimbursement 59:20 reincurred 16:14 related 4:22 5:18 relationship 54:22 57:8 relevant 17:13 relief 59:12 remain 3:6 34:24 remaining 6:19 remains 34:20 remanded 14:19 remember 11:9 29:6, 9 50:2 removal 7:6 16:1 18:11 remove 5:2 18:3, 18 19:11, 16, 18 30:7, 25 33:4, 6 35:23 53:18, 22 removed 7:25 38:5 60:8, 13, 23 removing 17:25 18:7, 20 19:13 34:20, 24 repair 35:20 36:5, 20 38:2, 3 repairing 37:17 repairs 43:24 44:9, 15 replace 36:1, 5 replicate 36:16 report 52:3 56:8, 15 62:1, 1 REPORTER 1:1 4:14 55:1 62:1 Reporters 1:1 REPORTING 1:1 4:15 represent 25:16, 17, 17 27:8</p>	<p>representatives 27:16 represented 27:3 representing 48:3 required 5:22 6:14, 20 29:12 residents 27:13 respect 16:21 49:22 response 6:7 28:18 32:25 rest 16:6 result 23:23 32:24 review 5:21 reviewed 22:1 Richard 2:1 Ridenour 37:23 44:2 right 13:14 17:18 18:14 21:5 22:13 23:19 25:13 27:10 29:6 30:17 32:1 35:1 36:21 37:9, 11, 18, 22 41:18, 20 43:9 47:9 48:16 49:10 50:24, 24, 25 51:15 52:14 54:7, 8 55:14 56:3, 22 58:15, 20 59:16 60:15 river 9:19, 21 23:2 49:8, 9, 13 50:1, 8 51:3 RMR 1:1 role 12:7 roll 3:10, 12, 15 rough 10:6 16:18 roughly 32:15 round 13:17 route 14:12 routes 14:22 routine 36:24 37:6 RPR 1:1 62:1 rubber 35:22 ruled 41:17 60:24 ruling 54:7 run 10:17 30:1 running 44:5 57:11, 17 < S > safety 46:2 47:6 sat 28:9 60:21 saw 52:20, 20, 21</p>	<p>saying 15:22 21:15 24:21 41:2 52:5 says 40:20 47:17, 17 scenario 8:19 16:3 32:23 33:14 38:16 43:22 55:11 score 32:21 screw 31:25 scrutiny 56:22 seated 3:9 second 13:17 21:24 26:25 27:8 39:24 secretary 7:1 18:8, 9 20:25 21:11 22:8, 10 58:2 Section 4:7 48:22 sedimentation 38:24 see 17:14 31:14 38:5 44:4 49:7 52:1 seeing 30:1 seek 14:23 seen 38:18 senator 58:4, 14 sense 53:19 sent 7:5 services 13:3, 4 SESSION 1:1 4:6, 16, 18 47:20 61:14 sessions 59:7 set 40:24 62:1 settling 51:6, 6, 12 severe 35:17 46:6 sewers 28:18 shaking 31:15 shape 57:13 sheer 24:17 sheet 48:23 shorthand 62:1, 1 show 53:17 shows 6:12 sic 13:8 side 21:9 24:13 29:11 34:7 41:12, 14 52:16 signed 62:1 significant 9:20 16:3 17:9, 11 47:6 55:25 59:1 significantly 16:11</p>	<p>38:21 silence 3:4 silly 13:18 silt 51:8 similar 7:9 27:21 simple 20:20 60:7 simply 7:13 10:12 27:12 simultaneous 55:1 simultaneously 51:22 single 24:15 41:2 sink 44:20 sir 23:3 sit 28:23 sitting 41:16 situation 39:13 Six 4:4 13:7 34:10 43:14 slow 37:21 small 37:24 38:19 46:1 53:3 snuff 36:20 37:6 solid 41:9 Somebody 27:14, 14 58:4 61:1 somewhat 16:12 51:7 soon 27:25 54:7 57:11 sorry 33:20 37:15 48:6 Sort 19:20 sound 31:23 south 23:1 43:11 51:1 span 39:20 speakers 55:2 speaking 24:17 special 3:1 species 12:10 specific 55:23 specifically 26:16 29:13 specifics 6:1 speculate 47:18 speculating 44:17 speed 47:3 spend 32:18 33:10 41:25 56:3 spending 14:18 32:24 40:11</p>
---	--	--	--

<p> spent 16:8 40:7 44:14 spitball 36:9 spots 39:16 spreader 15:25 23:1, 11 43:12 50:23 51:1 Sr 2:1 stacked 21:21 staff 42:24 47:19 stand 3:3 standing 3:6 15:16 27:11, 12, 16, 17 standpoint 52:6 start 5:15 10:13 31:15 51:25 54:6 started 29:7 42:25 52:9, 14 starting 10:17 starts 47:18 55:15 State 1:1 62:1, 1, 1 statistically 24:17 statute 25:21 Statutes 4:7 statutory 6:21 stay 39:10 47:8 stays 45:6 48:18 step 54:6 58:5 steps 8:25 Steve 4:13 29:7 48:4 Steven 2:1 stop 9:5 10:19 18:20 23:18 26:7 54:24 Stout 2:1 3:23, 24 4:10 10:20, 23, 24 11:1, 8, 12 37:14 38:6, 9 40:10 45:17, 22 53:12, 19 57:23 58:9, 18, 21 straight 26:24, 25 strategy 4:20 Street 1:1 strong 8:24 45:25 strongly 40:1 structure 36:2, 2 struggle 24:8 stuck 18:24 study 36:10, 10 stuff 6:5 12:20 19:9 57:20 stung 11:17 styled 62:1 submit 51:18 52:10 substantial 49:1 successful 26:1 suggest 9:3, 12 30:17 49:3 suggested 6:8 49:2 suggesting 5:25 suggestion 18:19 Suite 1:1 2:1 sum 61:4 super 17:10 supplement 8:4 support 19:4 supported 19:1 20:16 supportive 54:1 supposed 6:12 sure 5:10 10:15 22:8 27:10, 15 31:10 38:8, 10, 13 39:21 44:5 47:3, 5 56:25 57:20 switch 20:17 system 28:3, 15 50:23 systems 51:6 Szerlag 2:1 4:11 24:3 35:14 36:21 37:1, 11, 18, 21 44:2 47:17 48:4, 10 59:1, 6, 16, 19 < T > tag 10:15 take 6:23 8:15 9:13, 18 14:12 16:6 17:7 23:17 26:13 28:1, 25 33:8 35:25 43:10 44:4 51:8, 9 52:2 54:5 55:11 TAKEN 1:1, 1 8:24 32:5 42:19 62:1 takes 17:7 36:13 talk 4:20 21:1 22:11 28:24 43:8 45:3 51:24 58:13 talked 22:9 28:10 45:2 talking 10:9 22:20 26:7, 11 29:25 37:7 41:16 48:11 49:20 Tallahassee 2:1 22:2, 3, 7, 17 50:3 52:19 tangentially 14:9 tape 35:22 tat 42:7 technically 12:16 21:7 tell 7:17 8:15 9:5 16:9 23:8 28:25 38:19 42:22 56:4, 9, 13 57:16 telling 22:22 24:9 47:5 58:13 ten 10:8 13:9 16:4 terms 9:2, 9 14:10 43:17 47:24 56:22 59:19 test 49:5 50:17 testified 12:19 17:21 19:12, 18 testify 17:24 testimony 18:3, 12 Thank 3:5, 9 4:5, 19 theirs 8:9 theory 42:4, 7 thereabouts 24:25 thing 6:6 8:25 9:9 11:9 16:20 17:18 24:15 28:12, 19 29:19 33:11 41:3 42:2 43:19 45:2 55:25 57:9 things 5:13, 23 7:19 9:16, 22, 23 11:12 16:22 19:2, 6 20:15 24:8, 11 31:1 32:16 44:7 47:14 54:10 56:11 60:19, 20 61:6 think 5:20, 22 6:4 7:13 8:5, 9, 15, 18 9:5 11:9, 16, 25 12:6, 21, 23 13:12, 13, 14, 14, 15 14:1, 16 15:20 16:1, 2, 6 17:13 19:3, 11 20:16 21:15 24:9, 16 25:18 29:23 30:9, 16 32:23 33:3 37:12 38:14 39:7, 8, 12, 19 40:6, 13, 15 42:24 43:19 44:24 45:7, 17 47:2, 7 48:2, 4 52:16 53:19 54:5 56:9, 17, 20, 24 57:10, 15, 24 thinking 31:13 third 11:8 16:25 thought 31:22 35:23 58:21 60:18, 22 61:1 three 7:9 13:8, 10 16:23 43:1, 3 threw 59:22 throw 38:1 thrown 7:10 54:25 55:3 Tidal 24:3 47:10 48:25 tidally 39:5, 8 tide 45:18, 24 47:11 48:25 tide's 39:9 49:7 51:4 tie 45:7 TIME 1:1 7:12 15:13, 15, 18 34:8, 10, 14, 15, 16 37:13, 16 38:14 39:24 40:4, 5, 7, 8 42:20 43:5 46:6 51:2 52:2, 4 53:9, 23 54:11 58:12 59:10, 24 60:10, 18 62:1 timeline 34:4 35:5, 10 timelines 34:2, 5 times 45:4 46:6 47:8 Timewise 32:4 55:11 timing 33:21 34:18 tit 42:6 today 7:14 10:17 told 22:5 38:12, 13 60:7 Tony 12:11, 22 13:14 20:1 49:19, 22 50:15 top 48:23 torn 28:17 totally 51:8 touch 7:18 tour 43:11 touring 55:22 town 53:1 traffic 35:16, 16 36:7 </p>	
--	--

TRANSCRIPT 1:1

62:1, 1
tree 51:11
trial 21:8, 13, 17
tried 32:10 50:6
triggers 48:5
trouble 11:15
trying 16:2, 17 24:18
 32:22 33:1 55:10
 58:7
turn 5:7
turning 14:5
turns 41:8
twist 7:10
two 4:4 7:9 12:15
 14:22 15:11 16:22
 20:19 21:22 28:9
 36:4 37:3, 4, 5 42:16
 43:17
type 28:12, 19 43:5
types 53:4
typewritten 62:1

< U >

Uh-huh 11:7, 11
 18:13 25:4 27:24
 50:19
ultimately 14:18
UMAM 12:24 32:20
uncovered 40:4
underlying 5:18 57:8
understand 12:21
 30:10 40:15 49:11
 51:10 60:16
understanding 46:20
 54:15 57:5
unfavorable 5:10
unfortunate 29:21
unfortunately 34:15
 51:14 53:2
unilaterally 31:18
unlicensed 25:22
unquote 30:11
unturned 40:4
update 5:5
upgrades 38:1
upset 24:5 30:12
upside 16:8
uptake 51:14

usable 37:17, 18
use 45:14
uses 12:25
utilize 59:10, 21
utilizing 59:15

< V >

VARN 2:1, 1 4:13
 5:2, 3, 9 10:22 11:7,
 11, 14 12:8 15:4, 9
 17:23 18:1, 5, 8, 13,
 16, 22 19:8, 20 21:5
 22:3, 16, 18 23:3, 7,
 19 24:4 25:1, 4, 9, 15
 26:4, 23 27:1, 6, 10,
 24 28:6 29:2 31:17
 32:7, 17 33:9 35:8
 38:12 41:10, 20
 42:10, 15, 21 43:4, 8
 44:14, 23 45:13
 46:14, 17, 20, 23 47:2,
 9, 13 48:16 49:10, 19,
 25 50:10, 19, 24
 51:12, 20, 23 52:12,
 22 53:2, 8, 14 54:6,
 11, 15, 18 55:5, 17
 56:25 57:16 58:6, 10,
 20, 23 59:22 60:15, 25
velocities 12:9
velocity 47:14
versus 48:24
violent 46:8
virtually 23:22
Voluntarily 29:2
vs 1:1 4:21

< W >

wait 10:21 14:13
 17:14 38:6
waiting 31:9
waived 34:2, 4, 8
waiver 34:10
want 6:14 7:4, 5, 22,
 25 8:12 10:9, 10, 19
 12:12, 23 17:1 23:7
 29:25 30:7, 7, 10, 25
 31:10 32:3 33:6
 34:25 35:1, 9 37:25
 38:2, 11 40:16, 21, 22
 41:3 42:2 51:24

52:13 54:23 56:2, 12,
 12, 17 57:11 58:7, 25
 59:2
wanted 26:18 31:19
 34:17 36:18
war 28:18
warn 47:14
waste 15:18
wastewater 11:3, 6
wasting 7:12
water 11:10 12:8, 18
 22:25 23:1, 17 24:2
 27:13 39:4 47:3
 48:14 49:1, 22 50:1,
 5, 7, 14, 18, 21 51:7
waterway 52:21
way 6:12 10:13
 11:22 15:22 22:18
 25:19 29:19 30:9, 14
 33:17 42:7 44:8
 52:18, 24 53:2 54:16
 59:4, 24 61:2
weather 46:6, 9 48:5
weekly 45:16
weeks 43:14 55:20
weight 19:1 20:1
Welcome 3:1
well 8:1 11:5 12:16
 13:25 16:23 21:18
 23:7, 8, 19 25:15
 26:6 31:17 35:15
 37:21 38:6 39:13
 40:2, 18 46:14 47:7,
 17 49:15 55:17, 18
 57:18
Welsh 2:1 3:25 4:1,
 10 35:11, 12 37:15,
 16, 19 42:11, 16 43:2,
 5, 21 44:11, 16, 21
 45:11, 15, 20 46:11,
 15, 19, 22, 24 50:9
 51:16, 17, 21
went 22:8, 9 25:15
 26:20 28:2
we're 4:19 5:16
 6:13 10:9 11:6
 16:11 18:18 21:1
 23:21 24:20 26:11
 28:16 31:20, 21, 23
 33:4 34:13 37:19

41:3, 4, 7, 9 42:12
 43:11, 12 46:24
 47:25 48:1 57:13, 21
 59:7, 15 61:5, 5, 7
West 1:1
wet 39:11
wetland 23:14
we've 5:17 11:13
 16:9, 12 33:4 34:12
 35:21 37:24 40:25
 46:14, 21 48:18
 50:12 54:13 57:20
wheels 54:8
WHEREOF 62:1
wife 30:12
Williams 2:1 4:2, 3,
 10 12:2, 4 21:24
 22:19 23:4, 16 27:21
 28:7 31:3, 5 44:20
 48:11, 17 49:11, 24
 50:17, 20 51:1, 15
willing 41:7
win 24:10 35:23
 39:24 41:9, 10, 14
withdraw 10:11
 14:23 26:11 31:18
 32:3 35:1
withdrawing 17:3
 31:18
witness 40:12, 14
 41:12, 13 62:1
witnesses 55:10
won 60:22
wonderful 21:14
wondering 11:1
word 27:25
work 6:13 9:7 15:6
 28:23 38:3 56:18
 58:17, 18 59:24
working 29:7 37:11
 54:6 55:15 56:14
works 53:3
worry 45:8 52:7
worst 8:19 10:1, 8
 16:2 32:21, 23 38:15
 55:10
writing 6:4
wrong 6:9 23:25
 < Y >

Yeah 10:4 12:4 15:9
16:20 22:10 24:4, 5
28:6 33:1, 21 38:16
39:18 44:11 45:22
46:23 49:19 51:12,
20 52:13 53:10 55:5
56:19 58:24
year 35:4 42:23
43:19, 21 44:1, 5, 15
60:8
years 11:20 28:10
43:1, 3
Yep 50:9

<Z>
zero 23:22 24:1
zone 28:18

CAPE CORAL CITY COUNCIL

IN RE:

MATLACHA CIVIC ASSOCIATION,

Plaintiff,

vs. CASE NO. 18-006752

CITY OF CAPE CORAL and DEP,

Defendants. /

TRANSCRIPT OF EXECUTIVE SESSION

DATE TAKEN: January 13, 2020

TIME: 3:08 p.m. to 4:12 p.m.

PLACE TAKEN: Cape Coral City Council, Council
Chambers
1015 Cultural Park Boulevard
Cape Coral, FloridaREPORTER: Jackie D. Burrell, RMR, RPR, FPR
Notary Public, State of Florida
at LargeFORT MYERS COURT REPORTING, LLC
Registered Professional Reporters
2180 West First Street, Suite 120
Fort Myers, Florida 33901
PHONE: (239) 334-1411 FAX: (239) 334-1476

Page 2

APPEARANCES:

CAPE CORAL CITY COUNCIL:

Joe Coviello, Mayor
John Gunter, councilmember
John M. Carioscia, Sr., councilmember
Marilyn Stout, councilmember
Lois Welsh, councilmember
Richard Williams, councilmember
Jessica Cosden, councilmember

ATTORNEYS:

CAPE CORAL CITY ATTORNEY'S OFFICE
Post Office Box 150027
Cape Coral, Florida 33915By: Dolores Menendez, Esquire
Steven D. Griffin, Esquire

and

MANSON BOLVES DONALDSON VARN
106 East College Avenue, Suite 820
Tallahassee, Florida 32301-7740
Cvarn@mansonbolves.com

By: Craig D. Varn, Esquire

Also present: John Szerlag, City Manager

1 MAYOR COVIELLO: Okay. Welcome to the special
2 meeting of the city council, January 13th, 2020.
3 This meeting will now come to order. Please stand
4 for a moment of silence on the invocation.
5 Thank you.
6 Please remain standing for the pledge of
7 allegiance.
8 (Pledge of allegiance recited.)
9 MAYOR COVIELLO: Thank you. Please be seated.
10 Madam City Clerk, will you call the roll.
11 THE CLERK: Yes, Your Honor. Before I call
12 roll, I'd like to announce that Councilmember
13 Nelson has asked to be excused, and I will mark her
14 so. And Councilmember Carioscia has indicated that
15 he is coming but he will be here after roll call.
16 MAYOR COVIELLO: Okay.
17 THE CLERK: Mayor Coviello.
18 MAYOR COVIELLO: Here.
19 THE CLERK: Councilmember Cosden.
20 COUNCILMEMBER COSDEN: Here.
21 THE CLERK: Gunter.
22 COUNCILMEMBER GUNTER: Here.
23 THE CLERK: Stout.
24 COUNCILMEMBER STOUT: Here.
25 THE CLERK: Welsh.

Page 4

1 COUNCILMEMBER WELSH: Here.
2 THE CLERK: Williams.
3 COUNCILMEMBER WILLIAMS: Here.
4 THE CLERK: Six present, two excused.
5 MAYOR COVIELLO: Thank you. Council will be
6 conducting a closed attorney/client session
7 pursuant to Section 286.0118, Florida Statutes.
8 The estimated length of the meeting is one hour,
9 and the persons attending are Councilmembers
10 Gunter, Carioscia, Stout, Welsh, Williams and
11 Cosden, Mayor Coviello; City Manager John Szerlag;
12 City Attorney Dolores Menendez; Assistant City
13 Attorney Steve Griffin, and Attorney Craig Varn.
14 Also in attendance will be a court reporter from
15 Fort Myers Court Reporting.
16 Let's go to closed session.
17 (The following proceedings occurred in a
18 closed attorney/client session.)
19 MAYOR COVIELLO: Thank you. So we're here to
20 talk about litigation strategy in the case of the
21 Matlacha Civic Association vs. City of Cape Coral
22 and the DEP, Case Number 18-6752 related to the
23 Chiquita Lock.
24 MS. MENENDEZ: Mayor and Council, as you are
25 aware, there was recently a recommended order by

1 the DOAH administrative law judge that was against
2 the permit to remove the lock. Mr. Varn is here,
3 Craig Varn is here - he was the attorney who
4 handled the administrative hearing below - to
5 update you on where we are now and what
6 alternatives may be available to the council at
7 this juncture. And with that I'll turn it over to
8 Craig.

9 MR. VARN: Hello. So, yes, we got the
10 unfavorable recommended order. I'm sure you were
11 disappointed, as was I. I can blame it on a lot of
12 people, but the bottom line falls with me. I --
13 you know, I should have done things differently,
14 but the bottom line, we are where we are, so we'll
15 start there.

16 We have a few options moving forward. We're
17 in a posture now where we've done everything
18 related to the underlying case. There's no more
19 filings to be had. The only question now is what
20 DEP is going to do with it. I think they're going
21 to give a pretty good review of it. They're
22 required to, and I do think they will do it.
23 They'll look at a lot of things we said, but
24 there's just so much there, I'm not comfortable
25 suggesting that the department will change the

1 there's any one person other than the secretary of
2 the department that controls that.

3 So, but looking forward, at some point we need
4 to make a decision on what you want to do, and my
5 memo that I sent out assumes you do want to move
6 forward with removal, which that's something you
7 obviously have to decide amongst yourselves, but
8 assuming that to be the case, you have essentially
9 three options, two of which are fairly similar,
10 just with a little bit of a twist thrown.

11 The first is the appeal, and I'll be quite
12 blunt, I wouldn't recommend wasting your time or
13 money on that one simply because I think at best we
14 would get back to where we are today with a new
15 hearing, and we can do a new hearing anyway if we
16 just modify the application, which if we came back
17 on appeal I would tell you we needed to do anyway
18 just to touch on some of the issues.

19 While I don't agree with a lot of the things
20 the judge did, the fact that she pointed them out I
21 would address them anyway, whether or not I agree
22 with them, just because I wouldn't want to go
23 through that again.

24 So moving on to the other options, would be --
25 again, assuming you want the lock removed and you

1 final decision. And there's some specifics in
2 there, but given where we still are and what you
3 may go forward with, I'd rather not get into all
4 what I think. A lot of it is in writing. We did
5 distribute a lot of the stuff, you know, our
6 critique regarding it. And one thing I'll point
7 out, you got a response that Mr. Hannon provided
8 you in which he suggested that we had done
9 something wrong by critiquing the administrative
10 law judge's order.

11 You know, my position on that is it again
12 shows his misunderstanding of the way it's supposed
13 to work in these proceedings. That's what we're
14 required to do if we don't want to lose the ability
15 to raise those issues on appeal. So had we not
16 pointed out all these issues we would have lost
17 them for good, so that's why we do what we do. But
18 anyway, back to where -- what we go forward -- now
19 we have about 60 days still remaining on the clock
20 before the Department is required to issue
21 something, but it, as with most of the statutory
22 deadlines, are just deadlines with no penalties.
23 So it is quite possible that they could take
24 longer, so I don't know what's going to happen on
25 that and I don't control that and I don't know if

1 need to get the permit, you could apply -- well,
2 you would need to apply for a modification or a new
3 application depending on when you do it and how you
4 do it, but it's the same process. You supplement
5 new information, and to get there what I think we
6 would need to do is hire an ecologist because
7 that's the one area where we were missing in our
8 presentation. We didn't have our own ecologist to
9 address theirs, and I still don't think they proved
10 anything, but obviously the judge disagreed with
11 me, so that's where we are. And so what I would
12 recommend, if you want to go forward, regardless of
13 which process you pursue and who does it, frankly,
14 you know, obviously I don't have to be involved in
15 this, you could tell me to take a hike, but I think
16 you need to hire an outside ecologist day one to go
17 out and analyze, make their determinations based
18 upon what's going to happen. And then I think to
19 address the worst case scenario you need an
20 ecologist to go look at what they said is going to
21 happen. And based upon that determination you can
22 come up with what's called mitigation to address
23 those impacts.

24 The City has already taken some very strong
25 steps -- let me go back. One thing that drives me

1 nuts about this case is how far advanced the City
 2 is in terms of environmental action, and so for
 3 them to come in and suggest that you're not is
 4 absolutely ludicrous. In fact, you know, me being
 5 an attorney, I think I would tell you stop doing
 6 all this because you're ahead of yourself and
 7 nobody -- you're taking on the work of what others
 8 should be doing on your own, which is a very good
 9 thing to do in terms of, you know, benefiting the
 10 public. I'm just not a benefit-the-public kind of
 11 person, so that's me personally. But what you're
 12 doing is absolutely amazing, so for them to suggest
 13 otherwise is ludicrous, and you should all take
 14 that home and feel good about that. But bottom
 15 line is we are where we are, and so you're already
 16 doing some things that we would incorporate into a
 17 permit modification. For example, your agreement
 18 with Fort Myers, that's going to take a load out of
 19 the river, which you guys are the ones that took
 20 that on. I mean, that's a significant issue for
 21 cleaning up the river.

22 There's other things you're probably doing
 23 that I'm not aware of, but those things you would
 24 incorporate in and get credits for those.
 25 Beyond that, whatever the ecologist said would

1 be the worst case, I would propose you go out and
 2 look at other mitigation proposals. You can buy
 3 mitigation credits. Those are about 125,000 to
 4 \$150,000 an acre. Yeah, they're not cheap, but,
 5 you know, if you look at all of this, the impacts,
 6 my rough guesstimate, you'd have to look at -- have
 7 the ecologist to really decide, but you're looking
 8 at probably in the five to ten acres, worst case.

9 So we're talking about if you really want to
 10 do this, you want to cover all your bases, and the
 11 amendment, whether or not you withdraw the
 12 application or you simply accept what goes forward
 13 from DEP and start over, either way, same, I
 14 recommend you do this. You're looking at a price
 15 tag of, you know, \$1.5 million, just to be sure.
 16 And so then that's the option of just going in
 17 today and starting over, just let the case run its
 18 course.

19 The other -- do you want me to stop?

20 COUNCILMEMBER STOUT: I was going to ask a
 21 question. Would you rather me wait until the end?

22 MR. VARN: I have no preference.

23 COUNCILMEMBER STOUT: Mr. Mayor?

24 MAYOR COVIELLO: Councilmember Stout, go
 25 ahead.

1 COUNCILMEMBER STOUT: I'm just wondering with
 2 all that we have done, such as the agreement with
 3 Fort Myers for them no longer dumping wastewater
 4 into the Caloosahatchee, that's one. Another is we
 5 prevented North Fort Myers from injecting a well,
 6 and instead we're taking their wastewater.

7 MR. VARN: Uh-huh.

8 COUNCILMEMBER STOUT: And then the third
 9 thing, as I remember, is a -- I think it's a borrow
 10 pit in Charlotte County that's bringing water down.

11 MR. VARN: Uh-huh.

12 COUNCILMEMBER STOUT: Do these things that
 13 we've already done, would they count?

14 MR. VARN: No. And that's -- and that's, to
 15 be fair, where we got into a little bit of trouble
 16 early on in this case, and that's what I think
 17 really probably is the biggest factor that stung us
 18 is that DEP, when we first did the permit, was
 19 giving you credit for projects that had occurred
 20 15 years ago. And I looked at it and said you
 21 can't do that. I mean, that's -- absolutely no
 22 way. And then their counsel got ahold of it and
 23 agreed and said you can't do that, so we modified.
 24 That has now clearly come back to bite us in the
 25 rear. I think improperly so, but nevertheless it

1 has. The judge harped on that a little bit.

2 MAYOR COVIELLO: Councilmember Williams,
 3 you've got something?

4 COUNCILMEMBER WILLIAMS: Yeah, I do.

5 As far as the ecologist, Janicki
 6 Environmental, I think they're part of it, don't
 7 they -- can't they fill that role?

8 MR. VARN: No, they're more of a water mover.
 9 They calculate velocities. An ecologist would be
 10 looking at the plants and the species, and that's,
 11 again, one of the problems is Tony did form
 12 opinions, but that's not his expertise. You want a
 13 person who focused on the biota, the fish, the
 14 birds, the little creatures, all of that; and
 15 that's where they had -- they had two different --
 16 they had -- well, technically both of their guys
 17 were ecologists, however, they only offered one as
 18 a water quality expert. And so even though he
 19 testified -- he was the one that gave -- I can
 20 critique this all day. If you read my stuff,
 21 you'll understand where I think there were errors.

22 But, no, Tony does not have the expertise that
 23 I would think you would want, and he doesn't do the
 24 UMAM analysis which you would need to do because
 25 that's what the department uses in calculating how

1 much offsets.

2 What you do is you go and look at what are
3 these services, what are these -- we look at an
4 acre. What services does this acre provide, and
5 you assign it numbers, and they add up to maybe an
6 eight. And then you go in and do your development
7 and it brings the property down to a six, so you've
8 got to make up the three (sic), and that can be
9 equated to in a pristine mitigation bank as a ten,
10 so you only need three. You can do -- it's a
11 mathematical equation at that point, but that's
12 what I think needs to be done on this.

13 Again, I think you're going to have -- I mean,
14 I think Tony was right. I don't think there's
15 going to be any impacts from this. I think it's
16 ludicrous, but that's where we are.

17 So in order to prepare for the second round,
18 it would be silly not to go in and be prepared to
19 address that issue. Again, I would argue all day
20 that it's not going to have any impacts. I'm
21 absolutely comfortable with that, but obviously
22 certain people don't agree with me, and the one
23 important one that didn't agree with me was the
24 judge. So that's where we are.

25 MS. MENENDEZ: Well, let's just break that

1 down for a minute because I think you have four
2 courses of action potentially available to you.
3 One is, and it's the one we'll circle back to is
4 to, as Craig has said, the recommended order will
5 probably be turning into a final order, and so one
6 of your options is to just -- let's assume that
7 happens and you abide by it, which means you leave
8 the lock where it is and you will be able to
9 explore a little bit, tangentially here what that
10 might be for you in terms of dollars and cents so
11 that you can compare that to the cost that you
12 might be facing to take an alternative route.

13 Okay. Another one is the appeal. Wait for
14 the final order to come in against you, and appeal,
15 which Craig has already said he does not recommend
16 because he doesn't think you're going to get any
17 real benefit from the money that you're going to be
18 spending to do that because ultimately you will
19 most likely be remanded back down again in this
20 case.

21 So that's why he's emphasizing one of the
22 other two routes. One is to file a new
23 application, and the other is to seek to withdraw
24 the current application and file an amended
25 application, which -- please feel free to describe

1 for them the differences, but that's where you're
2 going. And a minute ago you said 1.2 million; is
3 that what you said?

4 MR. VARN: No, I'd say 1.5.

5 MS. MENENDEZ: 1.5. And that 1.5, is that for
6 the -- any kind of physical work that would have to
7 be done and the experts, or does that include your
8 attorney's fees?

9 MR. VARN: Yeah, that would include the
10 hearing process, so hiring of experts, at least
11 one, possibly two. The ecologist is the primary.
12 Absolutely you have to have an ecologist.

13 That would include their time. You know, we'd
14 have to have everybody go through all this again,
15 depositions. This time you depose all of their
16 little people on standing -- not little. I mean,
17 you'd have to go through that. Normally you don't
18 waste time on that, but in this case, given what we
19 know through all that. So, yes, it would -- and
20 what I think would be the reasonable amount for
21 mitigation. It could be less. I mean, I could be
22 way off on my numbers. I'm just saying -- I'm
23 guesstimating given -- I mean, it's a fairly long
24 -- the canal is fairly long. If you assume impacts
25 like occurred on the north spreader, which we don't

1 think had anything to do with removal of the lock,
2 but, again, I'm trying to think our worst case
3 scenario, just adding that up that's a significant
4 amount of acreage, so you apply that. So ten acres
5 at figure one point -- or \$125,000 an acre, give or
6 take, that's 1.25. I think the rest would be
7 attorney's fees and experts, so I'm at 1.5.

8 I mean, on the upside, you've spent 50 so far,
9 and I can honestly tell you we've incurred 110 plus
10 in fees, so as much as it hurt you, I can guarantee
11 you it hurt me pretty significantly, but we're
12 there, so we've got that somewhat going for us,
13 what we incurred, but I can guarantee you a lot of
14 that is going to be reincurred because it was fees
15 for depositions that need to be redone because they
16 can change their opinions. I mean, there's a lot
17 going into that. So I'm just trying to give you
18 rough ideas of what it's going to cost to go
19 forward.

20 Clarification on one thing. Yeah, you can --
21 with respect to letting DEP go forward you can do
22 that for two different things. One, you do nothing
23 -- well, actually three because you do nothing,
24 just let it go. If you choose to appeal, you'd
25 have to let DEP. The third is if -- even if you

1 want to amend or file a new application you can
2 still let DEP go forward. The nuance in that
3 option and the option of withdrawing your current
4 application and amending it and re-filing is that
5 to the extent that there's any argument by the
6 petitioners that somehow those findings are held
7 against us going forward, it takes -- it would take
8 away that argument.

9 You'd have to change -- do a significant
10 number of changes so it won't have a super
11 significant impact on moving forward, but there are
12 a couple minor issues that kind of cause me some
13 grief that, again, I don't think are relevant and I
14 have to wait to see what DEP comes out with to say
15 whether or not they just flat out say, no, that's
16 not an issue or they accept it as an issue and then
17 it becomes more prevalent. I don't know. I would
18 hope they do the right thing and follow their
19 historic case law.

20 MAYOR COVIELLO: Councilman Carioscia.

21 COUNCILMEMBER CARIOSCIA: The DEP testified at
22 this hearing, correct?

23 MR. VARN: Yes.

24 COUNCILMEMBER CARIOSCIA: Did they testify in
25 favor of removing the lock?

1 MR. VARN: Yes.

2 COUNCILMEMBER CARIOSCIA: And I imagine that
3 there was a lot of testimony from the DEP to remove
4 the lock, correct?

5 MR. VARN: Yes.

6 COUNCILMEMBER CARIOSCIA: Okay. Who has the
7 final say in removing the lock?

8 MR. VARN: The secretary. It's a different --
9 the Department does through the secretary.

10 COUNCILMEMBER CARIOSCIA: So the DEP has now
11 joined us in the removal of the lock to the point
12 where they came in and gave testimony?

13 MR. VARN: Uh-huh.

14 COUNCILMEMBER CARIOSCIA: All right. The
15 administrator --

16 MR. VARN: Administrative law judge.

17 COUNCILMEMBER CARIOSCIA: The administrative
18 law judge finds, no, we're not going to remove the
19 lock, however, is it a suggestion that she made
20 because it doesn't stop the DEP from removing the
21 lock, does it?

22 MR. VARN: It has -- there are legal
23 implications. All of her findings of fact, they're
24 stuck with them unless the Department goes through
25 and makes a determination that either they're not

1 supported or the greater weight opposes what she
2 actually determined. And in some of those things
3 we do think there's not any -- there are not any
4 facts that support what she said.

5 COUNCILMEMBER CARIOSCIA: What does the DEP
6 feel, that there's some of those things or there's
7 no credibility?

8 MR. VARN: They disagreed with some of the
9 stuff also but --

10 COUNCILMEMBER CARIOSCIA: So what makes us
11 think that the DEP won't allow us to remove the
12 lock since they've already testified and they are
13 in favor of removing the lock and they find some of
14 the elements or some of the points that were made
15 by the administrative law judge, okay, wasn't in
16 fact credible? So why don't they remove the lock?
17 What are we concerned about? The entity that
18 testified with us to remove the lock makes the
19 final decision.

20 MR. VARN: Sort of. It's a different -- it
21 goes through a completely different process at this
22 point. They're bound by generally the facts as the
23 ALJ found. And let me point to an easy one. They
24 made a determination that there will be adverse
25 impacts to the fish and the fauna, okay, and that's

1 a weight issue between our expert, Tony Janicki,
2 who said there won't be any, and their expert that
3 said there will.

4 There's some legal arguments that we made
5 regarding this, but bottom line is she believed
6 their expert over our expert. And the department
7 can't change that. If the only question is whether
8 or not one was more believable than the other, they
9 have no -- they have no ability to change it. In
10 fact, if they do and it gets appealed, which I feel
11 comfortable it would, they would be nailed with
12 attorney's fees for the appeal for changing it
13 improperly. So they do not have an option to do
14 that. The options they have are very limited.

15 Like I said, there are certain things we
16 pointed out, which we don't think are supported.
17 Hopefully they'll switch that, but bottom line,
18 it's in a very bad posture to be overturned because
19 of the at least one or two findings that she made
20 as to adverse impacts, and that was as simple as
21 she believed their experts over ours.

22 COUNCILMEMBER CARIOSCIA: That's all I've got.

23 MS. MENENDEZ: So I guess to follow what
24 Councilmember Carioscia just said, if the DEP, if
25 the secretary of the DEP's final order is in our

1 favor, then probably all that we're about to talk
 2 about is not going to be too applicable. We'll be
 3 potentially in a position of defending an appeal
 4 that will be filed by Matlacha.
 5 MR. VARN: Right.
 6 MS. MENENDEZ: Okay. But what I'm hearing is
 7 that even though it's technically still the DEP,
 8 and even though the DEP at the trial level, at the
 9 lower level, was on the same side as the City that
 10 there's this like curtain between the arm -- the
 11 secretary and the arm of the DEP that issues the
 12 final orders and the arm of the DEP that's involved
 13 in the permitting and the trial arguments. So it
 14 would be wonderful if they found in our favor but I
 15 think what Craig is saying is you can't just --
 16 they're not one for this purpose. It isn't like I
 17 go to trial and I argue in your favor and then when
 18 the recommended order comes down I just go, well,
 19 I'm just going to find in favor of what I was
 20 arguing below anyway because the cards are all
 21 stacked in my favor. So there is that like curtain
 22 between the two arms of the DEP.
 23 MAYOR COVIELLO: Isn't that more or less --
 24 and I'll get to Councilman Williams in one second.
 25 The DEP that gave us the approval is the one down

1 The water in the south spreader doesn't go into
 2 Matlacha Pass. It goes into the river.
 3 MR. VARN: You're preaching to the choir, sir.
 4 COUNCILMEMBER WILLIAMS: I know, but that's
 5 what -- we have to push that issue. I don't know
 6 how Matlacha can say anything other than that.
 7 MR. VARN: Well, you know, I don't want to get
 8 into -- I will tell you they changed their -- well,
 9 actually I shouldn't say they changed. The judge
 10 changed the dynamic on us, because the whole issue
 11 up front was how we were -- the spreader was
 12 discharging over in that direction, which ignore
 13 for the moment that it had to go through all those
 14 little wetland areas and all that before it got
 15 to --
 16 COUNCILMEMBER WILLIAMS: When the lock is in,
 17 the water pressure will force it out. You take the
 18 lock out, that will stop.
 19 MR. VARN: Right. Well, so what the judge
 20 did, even though it was never raised as an issue,
 21 determined that when we do that we're going to make
 22 the flow virtually go to zero, and she implied that
 23 as a result of that there will be adverse impacts.
 24 You know, that -- and I'll just say it. That was
 25 completely wrong. You can't get from a flow of

1 here in Fort Myers and this is going to be reviewed
 2 up in Tallahassee; is that correct?
 3 MR. VARN: Yes, but we involved Tallahassee
 4 quite a bit through the process. Again, going back
 5 to the one issue that I had raised, I told you them
 6 giving us credit, we had numerous discussions with
 7 Tallahassee on an ancillary issue to that, that --
 8 so I'm not sure it ever went to the secretary, but
 9 it went high up. We at least talked to one deputy
 10 secretary about it. So, but, yeah, what happens
 11 now is they are cut off though. They can't talk to
 12 each other.
 13 MAYOR COVIELLO: Right. The local DEP really
 14 can't have any influence over what's going to
 15 happen --
 16 MR. VARN: Yes.
 17 MAYOR COVIELLO: -- up in Tallahassee.
 18 MR. VARN: That's the easiest way.
 19 COUNCILMEMBER WILLIAMS: Let me go back to
 20 where I was before I got cut off. We were talking
 21 about the ecologist and so forth. The -- anybody
 22 that looks at anything out there and telling you
 23 that it's going to affect the fish, it's going to
 24 affect the fauna, everything, what's got to be
 25 followed here is where is the water coming from?

1 zero to automatic impacts. That has nothing to do
 2 with anything. It's water levels, first of all.
 3 MR. SZERLAG: Tidal action.
 4 MR. VARN: And so -- yeah. I'm going to get
 5 upset about this, but, yeah.
 6 So you are absolutely correct. The problem is
 7 it's what she found, and, again, it's one of those
 8 things that she implied, and so my struggle with
 9 telling you -- again, I think we did what we needed
 10 to do to win this case. I'm still comfortable --
 11 looking back would I do things differently?
 12 Absolutely. I always learn, but looking at this
 13 from an appellate side, it is very difficult to --
 14 it's going to be difficult for the department to go
 15 through and every single thing that she found to
 16 overturn every one of them. And so I think just
 17 speaking as sheer numbers statistically, the odds
 18 aren't good in that, and that's why I'm trying to
 19 prepare.
 20 MAYOR COVIELLO: We're going to get a final
 21 hearing against us again is what you're saying, and
 22 that's --
 23 MS. MENENDEZ: The final order.
 24 MAYOR COVIELLO: Final order, around March
 25 11th or thereabouts?

1 MR. VARN: Yes.
 2 MAYOR COVIELLO: Let me ask a question because
 3 this was an administrative hearing.
 4 MR. VARN: Uh-huh.
 5 MAYOR COVIELLO: The next level to me would be
 6 to go into a courtroom. I mean, we have a guy that
 7 doesn't have a law license fighting us on an
 8 administrative hearing.
 9 MR. VARN: And that's completely legal. He's
 10 absolutely allowed to do that.
 11 MAYOR COVIELLO: But if we go into a courtroom
 12 and we do some kind of a legal proceeding, then he
 13 can't do that; is that right? So how do we get to
 14 the next level?
 15 MR. VARN: Actually, if you went to a -- well,
 16 anywhere you go he can represent himself. He can't
 17 represent other people, but he could represent
 18 himself absolutely. So I don't think it will
 19 matter one way or the other on that issue, and,
 20 frankly, in the administrative process there's a
 21 provision under statute that allows -- it actually
 22 exempts it from the unlicensed practice of law when
 23 you act as a QR at the Department of Administration
 24 Hearings.
 25 MAYOR COVIELLO: Let me ask you a question.

1 Would we be potentially more successful if we go
 2 into a court of law with some kind of a lawsuit as
 3 opposed to these administrative hearings?
 4 MR. VARN: You don't have an option to do
 5 that. The only option you have is to go on appeal.
 6 You can't go into any circuit -- well, I guess let
 7 me stop. Are you talking about getting the permit
 8 issued or attacking the -- personally the other
 9 person? That's a whole different -- I'm not going
 10 to opine on that because that's not my area, but if
 11 we're talking about getting a permit to withdraw
 12 the lock, your only opportunity is to go to DEP,
 13 get the permit and take it through an
 14 administrative process and then up through the
 15 appellate courts. There is no circuit court
 16 action. It's specifically designated as an
 17 administrative process.
 18 MS. MENENDEZ: But if they wanted to appeal
 19 the final order, if they're not happy with the
 20 final order, which was the very first one you went
 21 through, which you were recommending against, that
 22 would be at the circuit court level.
 23 MR. VARN: No. That would be an appellate
 24 court. It goes straight to the appellate court.
 25 MS. MENENDEZ: Straight to the Second DCA?

1 MR. VARN: Yes.
 2 MS. MENENDEZ: And would the -- Matlacha Civic
 3 Association would not to able to be represented by
 4 Mr. Hannon in this case. Is Mr. Hannon one of the
 5 plaintiffs himself, individually?
 6 MR. VARN: Yes.
 7 MS. MENENDEZ: So he would be able to
 8 represent himself even at the Second DCA if he
 9 elected to do that?
 10 MR. VARN: Right. And I'm not sure he has
 11 standing, but bottom line is we didn't argue a
 12 whole lot on standing simply because they had a
 13 couple of city residents that lived on the water,
 14 and so, somebody would get in. Somebody would be
 15 able to do it. I'm not sure that the Matlacha
 16 representatives would have standing. There's a
 17 different level of standing at the appellate level
 18 that I won't get into, but it's a harder level to
 19 get at the appellate level than it is at DOAH.
 20 It's fairly easy at DOAH.
 21 COUNCILMEMBER WILLIAMS: We had a similar
 22 problem in the north when we had the barrier up
 23 there.
 24 MR. VARN: Uh-huh.
 25 MS. MENENDEZ: As soon as the word got out

1 that we had been approved to take the barrier out
 2 Matlacha went bananas. Instead of getting it into
 3 the court system because, you know, nothing against
 4 lawyers and judges but they don't know crap about
 5 this.
 6 MR. VARN: Yeah.
 7 COUNCILMEMBER WILLIAMS: We had what we called
 8 an EMA process, Ecosystem Management Agreement
 9 process, where we all sat down together. For two
 10 years we talked, and we had the ecologist, the
 11 environmentalist, the engineers, DEP, you know,
 12 interested parties, that type of thing, and we came
 13 to at that point an agreement of what we were going
 14 to do. We pulled the barrier out and most of the
 15 EMA net economy system benefits, is what we were
 16 calling them, have been done; we're doing it now.
 17 That's why we got -- the northwest is torn up like
 18 a war zone. That's in response to getting sewers
 19 in up there and that type of thing.
 20 Is this something we could do to get it first
 21 out of the courts, to get it out of the expensive
 22 negotiating, using lawyers and judges, could we
 23 somehow work with Matlacha and say, okay, let's sit
 24 down and talk about it, put together a process and
 25 you tell us what we need to do to be able to take

1 that lock out?

2 MR. VARN: Voluntarily, yes. They can -- you
3 can -- if they'll agree to it. Can you force that
4 process? No. The reason you could do that was
5 because it was with DEP. DEP was denying, if I
6 remember right. Actually that's the reason I first
7 started working with the City, was Steve and I had
8 an issue with some portion of that. I don't
9 remember. They were arguing about fixing
10 something, and that was -- that nonsense we got DEP
11 on our side to say you've done everything you're
12 required to, go away.

13 So, but, no, that issue was specifically
14 because there was a disagreement with whether you
15 could get the permit from DEP, if I recall, and so
16 there was -- it became a much bigger dynamic. But
17 the answer to the question is if they would agree,
18 yes, but you can't force the issue.

19 The only way -- the only thing you can force
20 is through the administrative process. That's
21 unfortunate, but, you know -- you know, there's no
22 harm -- or let -- there's little harm in letting it
23 proceed. I think you can combat everything that
24 happened in this through all the other avenues that
25 I'm talking about. So if you really want to, going

1 through and letting it -- and seeing how DEP run
2 its course, I feel very comfortable that they're
3 not going to flip it, but if -- you know, you can
4 do that and you can still follow. It doesn't kill
5 you on doing any of the other alternatives that
6 I've mentioned. So, you know, that may be where
7 you want to go, but if you want to remove the lock
8 you're going to have to do one of these, and I
9 don't think appeal is your way.

10 I understand you want to get -- you know, I
11 shouldn't say, quote, unquote, real judges because
12 my wife gets very upset when I say that since she's
13 an administrative law judge, but, you know, an
14 Article V judge, let's put it that way, you know,
15 and get one of them. But, again, I don't -- I
16 think the best you're going to get is that we'll be
17 right back here, and I would not suggest you go
18 back through this process, a new hearing without
19 addressing some of these issues because it's going
20 to come down to a he said/she said. And so even
21 if -- what I'm proposing, even if they agree with
22 their expert that there will be harm, you will have
23 mitigated that harm, and that's the backup there.

24 So, you know, again, whether it's me or not,
25 if you want to remove this you're going to need to

1 do these things. I'm not -- anybody is going to
2 have you do it.

3 MAYOR COVIELLO: Councilman Williams, you've
4 got more questions?

5 COUNCILMEMBER WILLIAMS: No, I've given up.

6 MAYOR COVIELLO: Councilman Gunter.

7 COUNCILMEMBER GUNTER: Actually you kind of
8 answered the question I was going to ask, but the
9 question was, was there any harm waiting for DEP
10 because, you know, what I want to make sure is we
11 don't do something prematurely and that offends DEP
12 in some form or fashion, so that's why I've said
13 I'm kind of thinking maybe it would be best to
14 let's see what DEP is going to do first, you know,
15 before we start shaking the can. That's kind of my
16 opinion.

17 MR. VARN: Well, I would ask before
18 withdrawing -- you can unilaterally withdraw it if
19 you wanted to. I would recommend, if you chose, we
20 would ask first. Say, hey, we're just going to do
21 this. We're going to kind of pull back, regroup
22 and re-file just to get a thought from them, but it
23 doesn't sound like we're going to go down that path
24 anyway, so it's out, but I wouldn't do anything
25 just to screw DEP.

1 COUNCILMEMBER GUNTER: Right. Now what
2 happens with -- we can either re-file or keep this
3 in motion as far as if we do want to withdraw the
4 lock. Timewise what's -- to me it seems like it's
5 taken us forever to get to this point, to be quite
6 honest with you.

7 MR. VARN: A couple issues real quick. If
8 this goes through, DEP issues a final order. This
9 one is dead unless you appeal it. So we would do a
10 new application, so that's why I tried to
11 distinguish between amendment and new. That would
12 be a completely new application because the old
13 application has been denied.

14 MAYOR COVIELLO: And that's the one that you
15 said is 1.5 million roughly to go do all these
16 things?

17 MR. VARN: If you're going to redo it you need
18 to be prepared to spend 1.5. Again, you need the
19 ecologist to come in. You need to hire that
20 person, and then once they come up with a UMAM
21 score on your worst case, that would give you the
22 figure on moving forward. So I'm just trying to
23 think of a worst case scenario. You won't be
24 spending any of that dollar until you get a result
25 -- a response from your ecologist. So I'm just

1 trying to forewarn you, but yeah.
 2 COUNCILMEMBER GUNTER: And the last question I
 3 was going to ask was if we -- I think, first of
 4 all, we've got to decide if we're going to remove
 5 the lock or not. If we do, my question to you
 6 would be if we do want to remove the lock, in your
 7 professional opinion what would be the best avenue
 8 to take?

9 MR. VARN: Exactly what I've described to you.
 10 You need to be prepared to spend the money to
 11 mitigate because I can't control -- the one thing I
 12 can -- I know I can control is which expert she's
 13 going to believe or he, whoever the judge is. And
 14 so to cover that scenario where they don't believe
 15 our expert, you can offset impacts through
 16 mitigation. So we'd have to have that as our
 17 backup. And that's the only way you're going to
 18 feel -- I'm going to feel comfortable moving
 19 forward.

20 One other real quick, I'm sorry, I meant to --
 21 you said the timing. Yeah, and that's -- we would
 22 not -- whoever your next person is or whoever does
 23 this shouldn't let that happen. We would address
 24 that in the forefront as opposed to letting -- what
 25 happened at the end of this hearing, and we

1 addressed it, is that the judge on her own motion
 2 waived the timelines, which there's no authority
 3 for doing that, and we objected, and it fell on
 4 deaf ears. And once that timeline is waived the
 5 timelines go out the door.

6 And so that happened. I will say on the flip
 7 side of that there is no penalty for failure to
 8 issue, but once the time is not waived they are a
 9 little bit more -- you know, you may get a 30-day
 10 waiver of time, but, you know, six months is
 11 absolutely ludicrous. But, again, on her own
 12 motion. So that wouldn't happen again. We've got
 13 other cases where we're dealing with that ahead of
 14 time, so we know to be prepared for this. It's not
 15 the first time it's happened unfortunately. The
 16 other time wasn't nearly as egregious but that's
 17 where we are. I apologize. I wanted to hit the
 18 timing issue before.

19 MS. MENENDEZ: So let's say that the council
 20 remains interested in removing the lock, and the
 21 city manager would be able to at least allude a
 22 little bit to while the lock is still there what
 23 costs might we be incurring in the near future.
 24 But assuming they remain interested in removing the
 25 lock and they do not want to appeal, and they do

1 not want to withdraw and re-file right now, would
 2 they be able to, as a council, consider this, leave
 3 the lock in place, do some maintenance and then in
 4 a year, for example, come back and file a new
 5 application, or would there be some other timeline
 6 that they need to be concerned about as they make
 7 this decision?

8 MR. VARN: It's a nullity at that point. You
 9 can do whatever you want. It has no bearing going
 10 forward. That's up to your timeline.

11 MAYOR COVIELLO: Councilmember Welsh?

12 COUNCILMEMBER WELSH: What is the cost to
 13 maintain the lock and operate it?

14 MR. SZERLAG: I had asked that exact question
 15 of Paul Kling, as well as another question, and
 16 that is that because the traffic, the boat traffic
 17 is so severe at Chiquita lock what would it also
 18 cost to build a parallel lock north of the existing
 19 lock, and it would cost about one to \$2 million to
 20 repair the existing lock and make it functional.
 21 We've done hardly nothing to it. Paperclips and
 22 rubber bands and duct tape is about it because we
 23 thought we would win the case and remove it. The
 24 cost to make that existing lock functional would
 25 also be between one and \$2 million. Once we take

1 the gates down, we replace them, we don't know what
 2 the structure -- the integrity of the structure
 3 that's holding those gates in place. So that's an
 4 estimate though, another one or two million to
 5 replace or repair those locks to make them
 6 functional.

7 The parallel lock to mitigate boat traffic
 8 would be about \$25 million, and that's more than a
 9 spitball number because back in 2007 there was a
 10 study to build a parallel lock and that study
 11 indicated \$17,400,000. There's something called an
 12 ENR, an engineering news record, and what that does
 13 is it takes an infrastructure project and it looks
 14 at the inflation rates of labor and materials, so
 15 that same lock that was estimated in 2007, to
 16 replicate that in 2020 would go from 17 million to
 17 25 million.

18 MS. MENENDEZ: But if they wanted to keep this
 19 one in place it would be an initial 1.2 million or
 20 so to repair it to bring it up to snuff?

21 MR. SZERLAG: Right.

22 MS. MENENDEZ: And then there would be annual
 23 maintenance cost, of course, but they would not be
 24 1.2 million, they would be more routine
 25 maintenance?

1 MR. SZERLAG: I don't have those annual
2 maintenance costs, but --
3 MS. MENENDEZ: Oh, one to two --
4 MR. GRIFFIN: One million to two million.
5 MS. MENENDEZ: Okay. One million to two
6 million to bring it up to snuff and then routine
7 maintenance thereafter. That's not talking about
8 building another lock.
9 COUNCILMEMBER GUNTER: Is it functional right
10 now?
11 MR. SZERLAG: It's working right now. I
12 wouldn't call it functional. I think it could
13 break at any time.
14 MAYOR COVIELLO: Councilmember Stout.
15 Councilmember Welsh, are you done? I'm sorry.
16 COUNCILMEMBER WELSH: No. What's the time
17 frame on repairing the lock so that it's usable?
18 MR. SZERLAG: Again, it's usable right now.
19 COUNCILMEMBER WELSH: We're using it, but it's
20 really not functioning at full capacity.
21 MR. SZERLAG: Well, again, it's slow, all
22 right, and I don't know if it could be any faster.
23 But Mark Ridenour, who is in charge of facilities,
24 has advised that we've done very -- a very small
25 amount of maintenance because we didn't want to

1 throw money away on upgrades. So if council
2 decides that they want to repair the lock we would
3 immediately begin that work to repair the lock.
4 MAYOR COVIELLO: Can we just do a quick poll
5 of who would like to see the lock removed?
6 COUNCILMEMBER STOUT: Well, wait, can I ask a
7 question because that might affect --
8 MAYOR COVIELLO: Sure.
9 COUNCILMEMBER STOUT: My question is are you
10 sure that when we hire this ecologist that they're
11 going to say what we want them to say?
12 MR. VARN: I mean, what I've told you, yes,
13 I'm sure they will say that because I've told you
14 what I think they're going to say the first time,
15 and then I'm going to have them analyze the worst
16 case scenario what they've raised. So, yeah, they
17 will say one of those. I'm guessing, given what
18 I've seen, that the actual impacts are going to be
19 very small. I mean, I could tell you, okay, but
20 the bottom line is, you're not going to -- this is
21 not going to change the dynamic significantly. In
22 fact, it will probably have less impact on a couple
23 of the, what we call breach 20, because it will
24 lower the flow and reduce sedimentation. And so
25 instead of pushing out through this narrow hole,

1 you're going to open it up and it will have a much
2 more gradual flow.
3 So the big issue they raised was the height of
4 the water level and it will drop because it will be
5 much more tidally influenced by probably another
6 foot. What nobody really looked at was, because we
7 didn't think that -- it's going to do this, which
8 it's already tidally influenced so we didn't think
9 that was going to change because the tide's going
10 to go up, it's going to come down. It will stay
11 wet. We didn't look at how much that might change
12 because we didn't think it would do any. So in
13 this situation I'd say, well, let's assume that's a
14 negative. How much would it impact -- you know,
15 what percentage of the mangroves. And I just can't
16 imagine it's going to be more than, you know, spots
17 here and here. Even looking at the north.
18 So, you know, again, to answer, yeah, they're
19 going to say what I think they're going to say
20 because I'm going to give them the broad span. Do
21 I know for sure that they're going to say there
22 will be no impacts? Absolutely not. And I'll go
23 even further and say can I guarantee you that we
24 could win this case on a second time? No, I would
25 never guarantee that.

1 Do I feel very strongly that this case would
2 be -- we -- well, this would be our best foot.
3 There's nothing we could -- I would -- I would not
4 leave anything unturned -- uncovered this time like
5 you could argue that I did the last time. I didn't
6 think it was necessary. Bottom line, no, I didn't
7 do it, and I would have spent more time, and this
8 time I can guarantee you that will happen. I will
9 be --
10 COUNCILMEMBER STOUT: I was just concerned
11 about spending the 1.5 and having our expert
12 witness against us.
13 MS. MENENDEZ: I don't think your concern
14 needs to be that our expert witness will be against
15 us. What I do think you need to understand is that
16 let's assume that we decide that we want to amend
17 our petition, and so what we do is we line up the
18 expert and we line up this mitigation -- well, all
19 the costs associated with that as our backup and we
20 go in and our expert says exactly -- all of our
21 experts say exactly what it is that we want them to
22 say and their experts say exactly what they want
23 their experts to say, and we have -- in addition to
24 all of our experts we have money set aside or
25 whatever we've gotten, agreements as to mitigation

1 that could be offered up to mitigate any of these
2 impacts, plus the experts are saying every single
3 thing we want them to say, all the ones we're
4 introducing and we're in front of either this one
5 or a different administrative law judge, and all of
6 that lines up complete with the mitigation, if
7 we're willing to do all of that at whatever cost
8 that turns out to be, I don't know, \$5 million, but
9 we're really solid on that; we win?

10 MR. VARN: I would never guarantee a win.

11 MS. MENENDEZ: That's why you need -- as much
12 as your witness is going to be on your side -- I
13 believe we'll find a witness that will be on our
14 side, but it is not a guaranteed win. It's
15 possible that we will put this money into it and we
16 will find ourselves sitting here talking about how
17 an administrative law judge ruled against us no
18 matter that we believe we did everything right. I
19 mean, it is possible that we'll fail.

20 MR. VARN: Right. The mitigation though
21 doesn't -- that's all conditioned on the permit
22 issuance. So the one million, whatever the
23 mitigation, that's all conditioned so the permit
24 gets issued, then you'd have to do it. It wouldn't
25 be you spend the money up front on that. The fees,

1 three and a half to four years ago.

2 COUNCILMEMBER WELSH: So then are we looking
3 at another three to four years?

4 MR. VARN: No, absolutely not.

5 COUNCILMEMBER WELSH: What type of a time
6 frame would we have ahead of us if we decide to
7 proceed?

8 MR. VARN: I'd need to talk to the ecologist.
9 Right away what I would say is I need you down
10 here. I need you to -- whatever it's going to take
11 we're going to tour both the south and north
12 spreader, we're going to look at everything, and
13 I'm going to be hand holding through all of this.
14 So I would hope within six weeks we can get him
15 down here, let's assume that, process everything,
16 get a new application, assuming DEP needs -- you
17 know, another two months for that. But in terms of
18 the hearing, we'd push that. We wouldn't allow the
19 last thing. So I'd say look at a year. I think
20 that's --

21 COUNCILMEMBER WELSH: So we look at a year,
22 best case scenario. In the meantime because I'm
23 concerned about the condition of the locks and the
24 repairs that would ensue if we have to just keep it
25 operating, so what kind of money are we looking at

1 the hiring, yes.

2 And I want to -- one thing that's interesting
3 about the ERP permit is you can mitigate for all of
4 your adverse impacts, so you can in theory,
5 everything they say, you can say, got it, I'm
6 offsetting it through this. As long as you tit for
7 tat, in theory there should be no way to lose, but
8 you cannot guarantee.

9 MS. MENENDEZ: Can they do that now?

10 MR. VARN: Not now, no.

11 COUNCILMEMBER WELSH: Basically that's what I
12 was going to ask you to clarify, was that we're
13 really not forking out a million five, it's more
14 like 250?

15 MR. VARN: Yes.

16 COUNCILMEMBER WELSH: And the million two
17 fifty would have been the mitigation.

18 My other question is how long has this process
19 already taken us to get to this point? What's the
20 time frame on it?

21 MR. VARN: I don't know when you began the
22 process, so I can tell you legally from -- it's
23 been a year at least.

24 MR. GRIFFIN: I think staff, Oliver, in
25 particular Oliver Clark, started on this about

1 there for a year to keep it operating?

2 MR. SZERLAG: I'll have to ask Mark Ridenour,
3 you know, what his diagnosis is, if you will, to
4 see if we could -- what it would take to keep the
5 lock running for a year. And I'm sure he's going
6 to hedge his own bets and say, John, it's going to
7 be a range of costs. You know, things can still
8 bumble along the way that we have been, making
9 repairs at a minimal cost. It's going to be X if a
10 gate falls off.

11 COUNCILMEMBER WELSH: Or even just, yeah, a
12 couple of pieces, just curious what it's going to
13 cost.

14 MR. VARN: You spent \$200,000 approximately
15 over the last year or so on repairs.

16 COUNCILMEMBER WELSH: And if the gate fell off
17 -- if the gate fell off, just speculating, the gate
18 fell off, what kind of fines do we pay because of
19 that?

20 COUNCILMEMBER WILLIAMS: They sink.

21 COUNCILMEMBER WELSH: What kind of fines would
22 we pay because the gate fell?

23 MR. VARN: All our problems are over at that
24 point. Fines, I don't think the department is
25 going to fine you for something like that. Would

1 you need to fix it? Yes.

2 Another thing you haven't talked about -- what
3 we didn't talk about -- you actually have a permit
4 now to leave the gate open at times, so that's
5 already been kind of considered, so there is a
6 mechanism by which it stays open, so you can
7 probably tie that in. So I don't think you're
8 going to need to worry about being fined. Would
9 they probably make you come back and fix it until
10 this permit issues? Yes.

11 COUNCILMEMBER WELSH: So how long can we keep
12 the gate open according to that?

13 MR. VARN: Honestly, I don't recall. I'd just
14 use it as a defense.

15 COUNCILMEMBER WELSH: Is it a daily basis, is
16 it monthly, is it weekly? How long can we --

17 COUNCILMEMBER STOUT: I think it's daily at a
18 particular tide.

19 MAYOR COVIELLO: The problem is --

20 COUNCILMEMBER WELSH: And do we keep it open
21 now?

22 COUNCILMEMBER STOUT: Yeah.

23 MAYOR COVIELLO: The problem is it's so narrow
24 that when the tide flows and it's very narrow the
25 current going through there is very strong, and it

1 so forth. Okay.

2 MR. VARN: I think to the mayor's point, I'm
3 not sure -- the speed at which the water flows
4 through there and that being the issue, I'm not
5 sure -- if you're telling me people are using it,
6 that's a pretty significant safety issue because --

7 MAYOR COVIELLO: Well, I think that's why we
8 have certain times it's allowed to stay open.

9 MR. VARN: That's right.

10 MAYOR COVIELLO: It's based on tidal flow.
11 When the tide flow is not huge, they leave it open,
12 and when it's big, they close it.

13 MR. VARN: There's lights that go on too, I
14 forgot, that warn of the velocity of things like
15 that, so anyway --

16 MS. MENENDEZ: You should be aware when John
17 says -- when Mr. Szerlag says, well, he's not
18 entirely aware and everybody starts to speculate,
19 no one else could attend this, so his staff is not
20 allowed to attend the attorney/client session to
21 provide that kind of information, by law they're
22 just not allowed, so it is certainly something that
23 could be further inquired and he can get you that
24 kind of information. But in terms of whether or
25 not we're maximizing the number of hours or

1 makes it very difficult for boats, especially small
2 boats, to navigate through the lock. It's a safety
3 issue.

4 MR. GRIFFIN: Again, I do know as a condition
5 of the current permit we have for the lock there
6 are periods of time when -- at severe weather times
7 that we can leave it open. For example, if there's
8 a hurricane predicted or if there's some violent
9 weather predicted you could leave that gate open;
10 you're allowed to do that.

11 COUNCILMEMBER WELSH: So have we maximized the
12 open gate for as much as they'll allow us to keep
13 it open? Have we done that?

14 MR. VARN: We've got -- well --

15 COUNCILMEMBER WELSH: Do we maximize that open
16 gate?

17 MR. VARN: I wasn't involved when that
18 happened --

19 COUNCILMEMBER WELSH: I'm just curious.

20 MR. VARN: -- but my understanding is that
21 we've got the most that the department will allow.

22 COUNCILMEMBER WELSH: Okay. So we do that?

23 MR. VARN: Yeah.

24 COUNCILMEMBER WELSH: Which to me means we're
25 operating it less because we leave it open more and

1 whatever that we're able to keep it open, I don't
2 think that -- I'm hearing him say that he's not
3 comfortable in representing that to you, so just --

4 MR. SZERLAG: And I agree with Steve. I think
5 there has to be a weather event that triggers that.

6 MS. MENENDEZ: Okay. I'm sorry, I didn't mean
7 to interrupt.

8 COUNCILMEMBER GUNTER: And you'll get us
9 clarity on that?

10 MR. SZERLAG: Yes, I will.

11 COUNCILMEMBER WILLIAMS: You're talking about
12 bringing in an ecologist. You should also have a
13 geologist, an environmental person, because the
14 water flow is just as important as the ecology
15 around it.

16 MR. VARN: Right.

17 COUNCILMEMBER WILLIAMS: And, you know, if
18 we've got a problem here, if it stays here there's
19 no problem, but if it gets out there then it could
20 be a problem for them.

21 I know that we had a lot of problems with the
22 preserve in the north section because we weren't
23 getting the sheet flow over the top of it, so
24 you've got to know how high is the land versus the
25 tidal -- high tide. You know, the amount of force

1 that that water creates is pretty substantial. You
2 know, she just said -- suggested what I was going
3 to suggest, just open the damn lock and leave it
4 open. That would also give us an opportunity to
5 test and find out what's coming in and where it's
6 going.

7 As far as I can see, when the tide's coming in
8 it's coming from the river. When it's going out,
9 it's going back to the river.

10 MR. VARN: Right.

11 COUNCILMEMBER WILLIAMS: I don't understand
12 why there's such a big problem with that. It's not
13 going into Matlacha Pass. The river is going into
14 Matlacha Pass.

15 MAYOR COVIELLO: Well, let me ask a question,
16 because I've heard there's several breaches north
17 of the lock through the mangroves. Have we been
18 taking any aerial photographs of that at all?

19 MR. VARN: Yeah, we considered all that. Tony
20 actually did the measurements that you're talking
21 about. We took that into consideration. With
22 respect to the quality issue, Tony can handle water
23 quality. That's not a problem.

24 COUNCILMEMBER WILLIAMS: Okay.

25 MR. VARN: Why is it an issue is because the

1 COUNCILMEMBER WILLIAMS: The south spreader,
2 the only time it's going to get bad is when the
3 lock is open or missing and the river flows in, but
4 the tide's going to drive it back out again. It's
5 just in and out, in and out, but both -- all canal
6 systems act as a settling agent, settling ponds.
7 So all of the canals clean the water somewhat, not
8 totally but they take a lot of the silt out. They
9 take some of the nitrogen loading out of there, but
10 they don't understand this. Matlacha is the
11 biggest polluter with all those palm tree farms.

12 MR. VARN: Yeah, settling wasn't an issue. It
13 was a nitrogen issue, and there's very little
14 nitrogen uptake in the canal unfortunately.

15 COUNCILMEMBER WILLIAMS: Right, very little.

16 MAYOR COVIELLO: Councilmember Welsh.

17 COUNCILMEMBER WELSH: Can we -- is it possible
18 to submit a new application and have the ecologist
19 and leave the other application in process?

20 MR. VARN: Yeah, yes.

21 COUNCILMEMBER WELSH: Can we do that
22 simultaneously?

23 MR. VARN: Yes. My only concern, and I have
24 to talk to DEP about it, whether they'd want to
25 start anew while the other one is still pending.

1 river is an impaired water body, and so there's --
2 and that's -- remember, I was mentioning earlier
3 about the conversations I had with Tallahassee, we
4 had a long debate as to -- you cannot impair an
5 already impaired water. You cannot add additional
6 loading, and so what we tried to point out was the
7 water in the lock area is actually better than the
8 river so there's going to be a net improvement.

9 COUNCILMEMBER WELSH: Yep.

10 MR. VARN: What they argued and DEP actually
11 was kind of iffy on was the load number. And we
12 said there was no loading. That got lost. We've
13 addressed that, but that's why it's an issue. You
14 cannot add to the impaired water body, and so
15 that's -- but Tony addressed that. That's not my
16 concern. We can hit that again. That's done.

17 COUNCILMEMBER WILLIAMS: We consistently test
18 our water in the canals.

19 MR. VARN: Uh-huh.

20 COUNCILMEMBER WILLIAMS: And it always comes
21 out better than the water outside. Like in this
22 case Matlacha is much more polluted than the north
23 spreader system is.

24 MR. VARN: Right, right. I know -- you're
25 right.

1 They might see some -- but, like I said, it's going
2 to take us a little bit of time to hire the
3 ecologist. To get them to develop the report, it
4 will probably be coming about the same time, so
5 that's why I'm saying it's not a huge issue. It's
6 an issue for me from a legal standpoint, but you
7 don't need to worry about that because, you know,
8 it is what it is.

9 MAYOR COVIELLO: We can get started on going
10 forward, just not submit it until you get the
11 final --

12 MR. VARN: Absolutely. If that's the
13 procedure you want to follow, yeah, you can get
14 started right away and we just don't have to bring
15 DEP in at this point. I mean, again, they were on
16 our side, so I think they're going to continue to
17 be.

18 MAYOR COVIELLO: Is there any way -- I mean,
19 this was a judge up in Tallahassee that never came
20 down here, never saw the lock, never saw the
21 waterway, just saw pictures; am I correct?

22 MR. VARN: No, she was down here. She came
23 down for the hearing.

24 MAYOR COVIELLO: Is there any way to get a
25 more local judge to hear this case or it's got to

1 be out of town?

2 MR. VARN: Unfortunately, the way the division
3 works is they have a fairly small number that
4 handle these types of cases. Judge Ffolkes was one
5 of them. Judge --

6 MAYOR COVIELLO: Will we be able to get a
7 different judge?

8 MR. VARN: We will be getting a different
9 judge this time. I'll be filing a motion to recuse
10 if this judge comes in again. Yeah, I'll leave it
11 at that.

12 COUNCILMEMBER STOUT: That was my question,
13 will we end up with the same judge.

14 MR. VARN: I don't -- never mind. Yes, we'll
15 be applying to get a new judge. I can't imagine
16 that we would get the same judge again.

17 MAYOR COVIELLO: So now can I ask for a show
18 of hands of who would like to remove the lock?

19 COUNCILMEMBER STOUT: I think it makes sense.

20 COUNCILMEMBER CARIOSCIA: Absolutely.

21 MS. MENENDEZ: So it appears that council
22 would like to remove the lock. I'm not hearing you
23 say that you're interested at this time -- if the
24 decision comes down against us, that you're
25 interested in appealing it. What I'm hearing is

1 that you are more supportive of the notion of
2 filing a new application in the event that the
3 order is not in our favor, which it is likely that
4 it will not be.

5 MAYOR COVIELLO: And I think I'd take it a
6 step further. I'd like Mr. Varn to start working
7 on it right away so as soon as we get that ruling
8 we can put the wheels in motion right away.

9 MS. MENENDEZ: So just so you're aware, and I
10 know one of the things he's probably about to say
11 is that Mr. Varn had capped his fees the last time
12 at \$50,000, and, in fact, we had inadvertently paid
13 him 54 so we've got a credit against another matter
14 that he's handling for us, but it is my
15 understanding that Mr. Varn is not planning on
16 capping his fees in that way for this next
17 endeavor; is that accurate?

18 MR. VARN: I will not. You guys -- I paid
19 more for this case than you guys did, just to be
20 fair, and so -- the most came out of my pocket.

21 MS. MENENDEZ: And that having been said, we
22 do have an ongoing relationship with this firm, but
23 for this reason we may want you to go ahead --

24 MAYOR COVIELLO: Let me just stop you. There
25 was a number thrown out --

1 (Comment by reporter due to simultaneous
2 speakers.)

3 MAYOR COVIELLO: There was a number thrown out
4 at 250.

5 MR. VARN: Yeah. And I would be -- I'm just
6 -- I would hope I wouldn't even come close to that,
7 to be honest with you. I'm just -- now knowing
8 what I've gone up against, the QR who is actually
9 an attorney and the amount of documents and
10 witnesses, I'm just trying to do my worst case
11 scenario on what this is going to take timewise,
12 and, you know --

13 MAYOR COVIELLO: Madam City Attorney, do we
14 need to discuss a dollar amount right here and now
15 so he starts working on this?

16 MS. MENENDEZ: Craig?

17 MR. VARN: Well I'd be happy to come back in,
18 you know -- well, first of all, it's not going to
19 be -- I'm not going to be doing much in the next
20 few weeks because I've got to get the ecologist.

21 Once the ecologist comes on board I do plan on
22 coming down here with him and doing all the touring
23 so I can point out all the specific issues. So
24 that will be -- I won't begin incurring any
25 significant amount of fees until we get this thing

1 ready to file with DEP.

2 Maybe what you want is we'll cap the fees.
3 Right now I won't spend more than 50,000 until I
4 come back before you and then tell you where we are
5 on everything. Actually it will be much less than
6 that, but pick a number, you know, 25, 30, I don't
7 care, and I'll come back before you. I'd like to
8 get through the ecologist's report so then I can
9 really tell you what I think the end number is
10 going to be. I can get a much better grasp on
11 things.

12 So if you want -- if you want to put a number,
13 we can put a number, or you can just tell me
14 continue working until we get the ecologist's
15 report, at which point I come back in and we
16 reauthorize further proceedings depending --

17 MS. MENENDEZ: I think that they want you to
18 continue work, is what I'm hearing?

19 MAYOR COVIELLO: Yeah.

20 MS. MENENDEZ: But I also think that what we
21 probably need to do, especially in light of all the
22 scrutiny that's going on right now in terms of our
23 council expenditures, is prepare a new engagement
24 letter that you think --

25 MR. VARN: Sure.

1 MS. MENENDEZ: --- delineates this hourly rate,
2 estimated cost, all that. We can look at it with
3 you and then we can place it on an agenda for
4 council to approve in the future. With the
5 understanding that to the extent that he is going
6 to be incurring some costs now that you're good
7 with him doing that? Because as I said, you do
8 have an underlying relationship with the firm.
9 This was not the only thing he's dealing with.

10 MAYOR COVIELLO: I think what I'm hearing is
11 we want to hit the ground running as soon as we get
12 the final order and hopefully -- I mean, if it
13 comes in our favor then we're in great shape, but
14 for some reason if it doesn't, which is what you
15 think is going to happen --

16 MR. VARN: And I can tell you, I already hit
17 the ground running. I'm already -- I've been
18 analyzing everything. Well, I mean, part of it I
19 had to, but I've been overanalyzing a lot of this
20 stuff to make sure that we've got everything going.
21 So we're already doing that, my firm is. So it's,
22 you know, there is some benefit to the past.

23 COUNCILMEMBER STOUT: I have a question that I
24 think I probably already know the answer to, but I
25 just need to ask it.

1 Does it make any difference since the DEP
2 secretary, all of these division chiefs, are
3 appointed by the governor, does it make any
4 difference if you have a senator or somebody
5 that -- to step in?

6 MR. VARN: Don't call. Do not do that. We
7 don't want to be accused of trying to improperly
8 influence.

9 COUNCILMEMBER STOUT: Influence. Okay.

10 MR. VARN: They know what their jobs are, as
11 much as I can disagree with a lot of them all the
12 time, they have a job to do. It's, you know, if
13 you -- I'm not telling you if you happen to talk to
14 your senator and you don't -- you know, complain,
15 obviously that's your right to do, but don't do
16 anything that would be perceived as attempting to
17 work through -- around them.

18 COUNCILMEMBER STOUT: To work around them,
19 okay.

20 MR. VARN: Right.

21 COUNCILMEMBER STOUT: I thought that was going
22 to be your answer, but I needed to ask.

23 MR. VARN: I'd love to be able to do that,
24 but, no, that's not what -- yeah.

25 MAYOR COVIELLO: I want to just ask

1 Mr. Szerlag regarding the significant impact that
2 this could have on the budget. Would we want to
3 consider perhaps using some FEMA money for some of
4 this, or would you find another way to fund the
5 1.5 million if it got to be that amount?

6 MR. SZERLAG: We do, again, based on one of
7 our budget sessions we indicated that we're putting
8 money aside on FEMA, moneys that come in, and
9 council can make that actually discretionary at
10 this point in time, so you can utilize the FEMA
11 moneys, I believe, for anything you like. It just
12 wouldn't be diverted to our disaster relief fund or
13 the general fund.

14 MAYOR COVIELLO: There's a certain amount of
15 dollars that we're going to look at utilizing.

16 MR. SZERLAG: Right.

17 MAYOR COVIELLO: This potentially might be one
18 of the areas that we look at.

19 MR. SZERLAG: FEMA money in terms of
20 reimbursement is most certainly one of the areas we
21 could utilize.

22 MR. VARN: And I will also -- I threw out the
23 mitigation. That's the easy go to. You just buy.
24 I would obviously work with John way ahead of time
25 to look at the projects you guys already have in

1 the pipeline. The only difference would be once
2 you agree to them as part of the permit they become
3 mandatory so that if something happened, you didn't
4 do the project, we'd have to amend the application
5 to put in something else in its place but...

6 MAYOR COVIELLO: You know, my attitude is very
7 simple. If you told me \$1.5 million would have
8 that lock removed a year from now I would say pay
9 it because it's only going to cost us more over
10 time to maintain it. So I'm not so concerned with
11 what it would cost to mitigate all this and do all
12 of this. My concern, like everybody's, is will we
13 get to where we need to be. Will we get it removed
14 after all this goes down.

15 MR. VARN: All right. I've got my orders.

16 MAYOR COVIELLO: I understand you can't give
17 that commitment because, you know, doing an
18 administrative hearing, like last time we thought
19 we -- I heard all good things, that we did a good
20 job and we covered all the administrative things
21 that we needed to do and everybody that sat in that
22 courtroom thought that we won that case and the
23 lock should have gotten removed, and for whatever
24 reason the judge ruled against us so...

25 MR. VARN: I just can only say I'm glad

Page 61

1 somebody else thought that too because I can assure
 2 you the day that I got the order that's not the way
 3 I felt, but, you know --
 4 MAYOR COVIELLO: So I guess to sum it up, what
 5 we're going to do is we're going to move forward to
 6 get things ready to file a new hearing, assuming
 7 that we're going to have a final order against the
 8 City of Cape Coral.
 9 MS. MENENDEZ: A new application.
 10 MAYOR COVIELLO: Everybody on board with that?
 11 Okay.
 12 MS. MENENDEZ: Then we need to reconvene in
 13 the council chambers.
 14 (Executive session concluded at 4:12 p.m.)
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

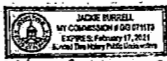
Page 62

STATE OF FLORIDA)
 COUNTY OF LEE)

I, Jackie D. Burrell, Registered Professional
 Reporter, and Notary Public in and for the State of
 Florida at Large, do hereby certify that the proceedings
 were had in the cause styled in the caption hereto on
 Page 1 hereof; that I was authorized to and did attend
 said proceedings and report the proceedings had therein
 fully and accurately in shorthand, and that the
 foregoing typewritten pages number 1 through 60,
 inclusive, constitute a transcript of my shorthand
 report of the proceedings taken at said time.

IN WITNESS WHEREOF, I have hereunto set my hand
 on January 27, 2020.

(This transcript has been digitally signed.)



Jackie Burrell

Jackie D. Burrell, RPR
 Notary Public - State of Florida
 My Commission Expires 2/17/2021
 Commission Number GG 071173