

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
COMMISSIONER'S BOARD ROOM  
February 18, 2004  
4 PM (Immediately Following BOCC Meeting)**

**AGENDA  
SPECIAL MEETING**

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**APPROVAL OF CHANGES TO THE AGENDA AND REMOVAL OF CONSENT  
AGENDA ITEMS WITH QUESTIONS, AS REQUESTED BY BOARD MEMBERS**

**I. WASTE MANAGEMENT DIVISION**

Discussion – Proposed Gun Range Bills (HB 149 & SB 1156) 2

**II. LEGAL DEPARTMENT**

Closed Session Pursuant to Ch. 286.011, F.S.  
Putney v. Hillsborough County 17

Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

*Visit our website at [www.epchc.org](http://www.epchc.org)*

HB 0149

2004  
CS

23        790.333 Sport shooting and training range protection;  
 24 liability; claims, expenses, and fees; penalties; preemption;  
 25 construction.--

26        (1) LEGISLATIVE FINDINGS.--

27        (a) The Legislature finds that more than 400 sport  
 28 shooting and training ranges exist on public and private lands  
 29 throughout this state.

30        (b) These sport shooting and training ranges are widely  
 31 used and enjoyed by the citizens of this state and are a  
 32 necessary component of the guarantees of the Second Amendment to  
 33 the United States Constitution and of s. 8, Art. I of the State  
 34 Constitution.

35        (c) Many of these ranges are used by state and local law  
 36 enforcement agencies for training, practice, and regular  
 37 mandatory qualification by law enforcement officers; by Florida  
 38 Wildlife Commission Hunter Safety Instructors who teach adults  
 39 and youngsters the safe use and handling of firearms in  
 40 preparation for obtaining hunting licenses; by school boards,  
 41 colleges, and universities for reserve officer training corps  
 42 training and activities; by school shooting teams; by Olympic  
 43 competitors; and by certified instructors who teach the safe use  
 44 and handling of firearms in preparation for applying for  
 45 licenses to carry concealed firearms for lawful self-protection.

46        (d) The public policy of this state is to encourage the  
 47 safe handling and operation of firearms and mandates appropriate  
 48 training in the safe use and handling of firearms for persons  
 49 licensed to carry concealed firearms and for persons licensed to  
 50 hunt in this state. Sport shooting and training ranges

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51 throughout this state provide the location at which this  
52 important public purpose is served and at which the firearms  
53 training mandates are fulfilled.

54 (e) Projectiles are integral to sport shooting and  
55 training range activity and to the ownership and use of  
56 firearms.

57 (f) Over years of operation, projectiles have accumulated  
58 in the environment at many ranges, the environmental impact of  
59 which is disputed.

60 (g) Litigation initiated by certain state agencies,  
61 including the Department of Environmental Protection and the  
62 Southwest Florida Water Management District, against sport  
63 shooting and training range owners and operators seeks to compel  
64 such owners and operators to discontinue the use of certain  
65 projectiles and to investigate and remove accumulated  
66 projectiles under the theory that these projectiles were  
67 deposited without authorization under prevailing state  
68 environmental laws. The cost of defending these actions is  
69 prohibitive and threatens to destroy the sport shooting and  
70 training range industry.

71 (h) The elimination of sport shooting and training ranges  
72 would unnecessarily impair the ability of citizens of this state  
73 to exercise and practice their constitutional guarantees under  
74 the Second Amendment to the United States Constitution and under  
75 s. 8, Art. I of the State Constitution.

76 (2) LEGISLATIVE INTENT.--The Legislature intends to  
77 protect and immunize sport shooting and training range owners,  
78 operators, users, employees, agents, contractors, and customers

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79 from environmental liability as described in this section and to  
 80 prohibit actions by the state, special purpose districts, or  
 81 political subdivisions which threaten to destroy or bankrupt  
 82 sport shooting and training ranges.

83 (3) DEFINITIONS.--As used in this section:

84 (a) "Environment" means the air, water, surface water,  
 85 sediment, soil, groundwater, and other natural and manmade  
 86 resources of this state.

87 (b) "Operator" means any person who operates or has  
 88 operated a sport shooting or training range.

89 (c) "Owner" means any person who owns or has owned a sport  
 90 shooting or training range or any interest therein.

91 (d) "Projectile" means any object expelled, propelled,  
 92 discharged, shot, or otherwise released from a firearm, BB gun,  
 93 airgun, or similar device, including, but not limited to,  
 94 gunpowder, ammunition, lead, shot, skeet, and trap targets and  
 95 associated chemicals, derivatives, and constituents thereof.

96 (e) "Sport shooting and training range" or "range" means  
 97 any area that has been designed or operated primarily for the  
 98 use of firearms, rifles, shotguns, pistols, silhouettes, skeet,  
 99 trap, black powder, BB guns, airguns, or similar devices or for  
 100 any other type of sport or training shooting.

101 (f) "User" means any person, partner, joint venture,  
 102 business, or social entity or corporation, or any group of such  
 103 persons or entities, organized or united for a business, sport,  
 104 or social purpose.

105 (4) SPORT SHOOTING AND TRAINING RANGE LIABILITY  
 106 PROTECTION.--Notwithstanding any other provision of law, any

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2004  
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107 private or public owner, operator, employee, agent, contractor,  
 108 customer, or user of any sport shooting or training range  
 109 located in this state shall have no liability to this state or  
 110 any agency of the state, special purpose district, or political  
 111 subdivision of this state for any claim associated with the  
 112 intentional or unintentional placement or accumulation of  
 113 projectiles in the environment on or under that sport shooting  
 114 or training range. For purposes of this subsection, a public  
 115 owner or operator means the state, a county, a municipal  
 116 corporation, a state university or college, or a school  
 117 district.

118 (5) PENDING AND FUTURE CLAIMS.--

119 (a) All claims from which sport shooting and training  
 120 ranges are provided immunity from liability under subsection (4)  
 121 that are pending in any court of this state or before any  
 122 administrative agency on the effective date of this section  
 123 shall be withdrawn within 30 days after the effective date of  
 124 this section.

125 (b) Any person injured as a result of a claim filed in  
 126 violation of this section shall have a civil cause of action for  
 127 treble damages, reasonable attorney fees, and costs.

128 (6) PENALTIES.--Any official, employee, or other agent of  
 129 this state or its agencies, or of a county, municipality, town,  
 130 special purpose district, or other political subdivision of this  
 131 state, who, while acting in his or her official capacity and  
 132 within the scope of his or her employment or office, willfully  
 133 and knowingly brings or is party to bringing an action in

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HB0149

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134 | violation of this section commits a felony of the third degree,  
 135 | punishable as provided in s. 775.082 or s. 775.083.

136 |       (7) PREEMPTION.--Notwithstanding any other provision of  
 137 | law, the Legislature preempts the entire field of regulating the  
 138 | environmental effects of projectile deposition at sport shooting  
 139 | and training ranges.

140 |       (8) CONSTRUCTION.--This section shall be liberally  
 141 | construed to effectuate its remedial and deterrent purposes.

142 |       Section 2. This act shall take effect upon becoming a law.

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By Senator Peadar

2-721A-04

See HB 149

1                                   A bill to be entitled  
2           An act relating to sport shooting and training  
3           range environmental liability protection;  
4           creating s. 790.333, F.S.; providing  
5           legislative findings and intent; providing  
6           definitions; specifying immunity from liability  
7           for certain persons or entities from certain  
8           claims relating to projectiles at sport  
9           shooting and training ranges; providing a  
10          limitation; requiring withdrawal of certain  
11          claims from courts or administrative agencies  
12          after a certain date; providing a cause of  
13          action for treble damages, costs, and fees  
14          under certain circumstances; providing criminal  
15          penalties; specifying preemption by the  
16          Legislature; providing for construction;  
17          providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21           Section 1. Section 790.333, Florida Statutes, is  
22           created to read:  
23           790.333 Sport shooting and training range protection;  
24           liability; claims, expenses, and fees; penalties; preemption;  
25           construction.--

26           (1) LEGISLATIVE FINDINGS.--

27           (a) The Legislature finds that more than 400 sport  
28           shooting and training ranges exist on public and private lands  
29           throughout this state.

30           (b) These sport shooting and training ranges are  
31           widely used and enjoyed by the residents of this state and are

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1 a necessary component of the guarantees of the Second  
2 Amendment to the United States Constitution and of s. 8, Art.  
3 I of the State Constitution.

4 (c) Many of these ranges are used by state and local  
5 law enforcement agencies for training, practice, and regular  
6 mandatory qualification by law enforcement officers; by hunter  
7 safety instructors of the Fish and Wildlife Conservation  
8 Commission who teach adults and youngsters the safe use and  
9 handling of firearms in preparation for obtaining hunting  
10 licenses; by school boards, colleges, and universities for  
11 reserve officer training corps training and activities; by  
12 school shooting teams; by Olympic competitors; and by  
13 certified instructors who teach the safe use and handling of  
14 firearms in preparation for applying for licenses to carry  
15 concealed firearms for lawful self-protection.

16 (d) The public policy of this state is to encourage  
17 the safe handling and operation of firearms and mandates  
18 appropriate training in the safe use and handling of firearms  
19 for persons licensed to carry concealed firearms and for  
20 persons licensed to hunt in this state. Sport shooting and  
21 training ranges throughout this state provide the location at  
22 which this important public purpose is served and at which the  
23 firearms training mandates are fulfilled.

24 (e) Projectiles are integral to sport shooting and  
25 training range activity and to the ownership and use of  
26 firearms.

27 (f) Over years of operation, projectiles have  
28 accumulated in the environment at many ranges, the  
29 environmental impact of which is disputed.

30 (g) Litigation initiated by certain state agencies,  
31 including the Department of Environmental Protection and the

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1 Southwest Florida Water Management District, against sport  
2 shooting and training range owners and operators seeking to  
3 compel such owners and operators to discontinue the use of  
4 certain projectiles and to investigate and remove accumulated  
5 projectiles under the theory that these projectiles were  
6 deposited without authorization under prevailing state  
7 environmental laws. The cost of defending these actions is  
8 prohibitive and threatens to destroy the sport shooting and  
9 training range industry.

10 (h) The elimination of sport shooting and training  
11 ranges would unnecessarily impair the ability of residents of  
12 this state to exercise and practice their constitutional  
13 guarantees under the Second Amendment to the United States  
14 Constitution and under s. 8, Art. I of the State Constitution.

15 (2) LEGISLATIVE INTENT.--The Legislature intends to  
16 protect and immunize sport shooting and training range owners,  
17 operators, users, employees, agents, contractors, and  
18 customers from environmental liability as described in this  
19 act and to prohibit actions by the state, special purpose  
20 districts, or political subdivisions which threaten to destroy  
21 or bankrupt sport shooting and training ranges.

22 (3) DEFINITIONS.--As used in this act, the term:

23 (a) "Owner" means any person who owns or has owned a  
24 sport shooting or training range or any interest therein.

25 (b) "Operator" means any person who operates or has  
26 operated a sport shooting or training range.

27 (c) "Projectile" means any object expelled, propelled,  
28 discharged, shot, or otherwise released from a firearm, BB  
29 gun, airgun, or similar device, including, but not limited to,  
30 gunpowder, ammunition, lead, shot, skeet, and trap targets and  
31 associated chemicals, derivatives, and constituents thereof.

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1           (d) "Environment" means the air, water, surface water,  
2 sediment, soil, groundwater, and other natural and manmade  
3 resources of this state.  
4           (e) "User" means any person, partner, joint venture,  
5 business, or social entity or corporation, or any group of  
6 such persons or entities, organized or united for a business,  
7 sport, or social purpose.  
8           (f) "Sport shooting and training range" or "range"  
9 means any area that has been designed or operated primarily  
10 for the use of firearms, rifles, shotguns, pistols,  
11 silhouettes, skeet, trap, black powder, BB guns, airguns, or  
12 similar devices or for any other type of sport or training  
13 shooting.  
14           (4) SPORT SHOOTING AND TRAINING RANGE LIABILITY  
15 PROTECTION.--Notwithstanding any other provision of law, any  
16 private owner, operator, employee, agent, contractor,  
17 customer, or user of any sport shooting or training range  
18 located in this state shall have no liability to this state or  
19 any agency of the state, special purpose district, or  
20 political subdivision of this state, for any claim associated  
21 with the intentional or unintentional placement, deposition,  
22 or accumulation of lead or arsenic from any projectile in the  
23 environment.  
24           (5) PENDING AND FUTURE CLAIMS.--  
25           (a) All claims from which sport shooting and training  
26 ranges are immunized under this section which are pending in  
27 any court of this state or before any administrative agency on  
28 the effective date of this act shall be withdrawn within 30  
29 days after the effective date of this act.  
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1           (b) Any person injured as a result of a claim filed in  
2 violation of this section shall have a civil cause of action  
3 for treble damages, reasonable attorney's fees, and costs.

4           (6) PENALTIES.--Any official, employee, or other agent  
5 of this state or its agencies, or of a county, municipality,  
6 town, special purpose district, or other political subdivision  
7 of this state, who, while acting in his or her official  
8 capacity and within the scope of his or her employment or  
9 office, willfully and knowingly brings or is a party to  
10 bringing an action in violation of this section commits a  
11 felony of the third degree, punishable as provided in s.  
12 775.082 or s. 775.083.

13           (7) PREEMPTION.--Notwithstanding any other provision  
14 of law, the Legislature preempts the entire field of  
15 regulating the environmental effects of projectile deposition  
16 at sport shooting and training ranges.

17           (8) CONSTRUCTION.--This section shall be liberally  
18 construed to effectuate its remedial and deterrent purposes.

19           Section 2. This act shall take effect upon becoming a  
20 law.

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## Naples Daily News

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### **Bill would block environmental cleanup suits for bullet pollution**

By **DAVID ROYSE**, Associated Press

December 10, 2003

TALLAHASSEE -- Bullets at gun ranges may fall harmlessly to the ground after hitting or missing their target, but some say all the lead that builds up underground might not be so safe.

A measure approved Tuesday by a state House committee would protect gun range owners from regulators' efforts to get them to clean up lead contamination on their property -- or on neighboring land or water.

The bill, approved by the House Judiciary Committee on an 8-4 vote, also would prevent shooting range owners from being sued for cleanup costs in state court.

Gun enthusiasts say the measure (HB 149) is needed to protect small businesses from regulatory agencies taking aim at them because of a sneaky antigun agenda.

Regulatory actions against shooting ranges are "nothing but politically-motivated vendettas," said Marion Hammer, the Tallahassee lobbyist for the National Rifle Association and a former national president of the group. "The bully boys of government have no business using their power and their resources to put little guys out of business."

Hammer, and bill sponsor Rep. Dennis Baxley of Ocala, say gun ranges can't afford to stand up to the state Department of Environmental Protection.

"Most of them are unable to bear the heavy hammer of DEP lawsuits," said Baxley, a Republican who has championed gun owners' rights.

The measure stems mainly from one such lawsuit, against the Skyway Gun Club in Pinellas County. It's being sued by the owners of adjacent land, the Southwest Florida Water Management District. The district has an environmental education center for children next door and a lake.

"Children fish on this lake and we've been finding elevated lead levels in fish," said William Bilenky, general counsel for the district. "We're not demonizing gun ranges, we just happen to own property next door to one."

Rob Kelly, Skyway's lawyer, says the lake on the district's property is "nothing but a glorified retention pond." But more importantly, he said, "there's no evidence that a single person was ever harmed or made ill."

The cleanup costs are estimated at more than \$10 million.

At any rate, Baxley wants to prevent Skyway and other gun clubs from similar litigation. The bill can now go to the full House for a floor vote.

Rep. Dan Gelber, one of four Democrats who voted against the bill, thinks it "absurd" to suggest DEP, an  
[http://www.naplesnews.com/npdn/cda/article\\_print/1,1983,NPDN\\_14910\\_2490806\\_ARTI...](http://www.naplesnews.com/npdn/cda/article_print/1,1983,NPDN_14910_2490806_ARTI...) 2/11/2004

agency that answers to Republican Gov. Jeb Bush, is pushing stealthy gun regulation.

"Let's face it, we're not in a state that has a particularly ambitious gun control agenda," said Gelber, of Miami Beach.

The director of DEP's Division of Waste Management said he's not antigun. Michael Sole, who is in charge of such environmental cleanups, is also a member of the National Rifle Association and a Marine who has shot at ranges.

Sole testified lead is dangerous in the environment, noting that's why lead shot was banned for bird hunting and in paint and gasoline.

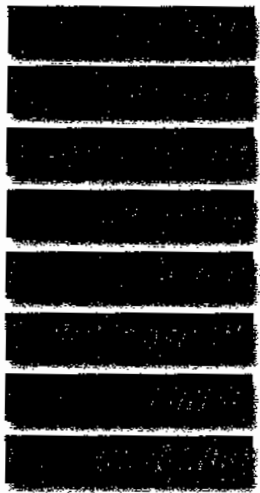
But he said the department didn't routinely go after gun clubs. With 400 shooting ranges in Florida, only one -- Skyway -- has been sued, he said. A couple others are facing investigations and about 25 may need cleaning up. Most of those will do so voluntarily, he said.

Committee Chairman Rep. Jeff Kottkamp, R-Cape Coral, noted that nothing in the bill would preclude the federal Environmental Protection Agency from taking action against gun ranges. Kottkamp also noted that anyone who can prove harm could still seek remedy in court.

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*The* **INFORMED VOLUSIAN**

**MISSIVE**



*Informed Volusian Issue 2 - Jan. 21, 2004*

*- Article 8*



**Co-Sponsors of  
Lead Contamination Bill Should  
Pull Support**

*by Scott Randolph, Esq.*

Florida House Bill 149 and Senate Bill 1156 propose to exempt all Florida shooting ranges from laws designed to protect the public from lead and arsenic contamination and threatens public employees with felony charges if they try to protect the public from these threats. The 14 co-sponsors of House Bill 149 need to admit that this bill was a bad idea and remove their support from this bill.

The National Rifle Association (NRA) says that enforcing environmental laws infringes on their Second Amendment rights. Soon they'll be arguing that dumping toxic waste into a river is an expression of free speech under the First Amendment.

The U.S. Environmental Protection Agency (EPA) estimates that there are 9,000 non-military outdoor ranges in the U.S., and that as much as 160,000,000 pounds of lead shot and bullets finds its way into the environment each year. There are approximately 400 ranges in Florida.

EPA and the Centers for Disease Control and Prevention identify human exposure to lead as a major health concern in the U.S. Children with levels as low as 10 micrograms per deciliter can suffer from damage to the brain and nervous system, behavior and learning problems, slowed growth, hearing problems and impairment of vision and motor skills. Even as adults, lead exposure can cause difficulties during pregnancy, reproductive problems in both men and women, neurological

disorders and kidney dysfunction.

Lead contamination also poses risks to the environment. Waterfowl are particularly susceptible to lead, as they mistake the lead for food or grit. If a bird swallows as few as six pellets, it will likely die from acute lead poisoning.

While lead is a natural element, it is rarely found in such concentrated form as in bullets and shot, and therefore, is rarely found in soils at the high levels encountered at shooting ranges. Newspapers report that the Florida Department of Environmental Protection (DEP) estimates that the Skyway Trap and Skeet Club of Pinellas Park has accumulated more than 14,000,000 pounds of lead in the soil and water. At least 160,000 pounds have been removed from three other sites in the last three years.

Data collected by University of Florida researchers from 6 public shooting ranges showed extremely high lead concentrations in soil (1-4% total concentration). The research also detected levels of lead in the groundwater as high as 694 parts per billion (the EPA drinking water standard is 15 ppb). These sites also exhibited high levels of arsenic in both the soil and water. DEP recognizes that there are favorable soil conditions in Florida for lead to leach into groundwater, where it can travel long distances. It also can easily be transported through runoff to surface water. More than 95% of Florida's drinking water comes from groundwater.

The sponsors and co-sponsors of these bills are telling the citizens of Florida that their own state agency should be powerless to stop this threat to public health. The state, however, cannot simply exempt industries from federally delegated programs, and this bill threatens to result in the loss of millions in federal funding because EPA will withdraw the program. It is unfortunate that the sponsors and co-sponsors are willing to risk millions of dollars that Florida needs in exchange for helping to exempt the gun industry from environmental laws.

Dennis Baxley is the sponsor of House Bill 149, and the 14 co-sponsors are Bob Allen, Sandra Adams, Donald Brown, Donna Clarke, Carl Domino, Greg Evers, Gayle Harrell, Lindsay Harrington, Ken Littlefield, Dave Murzin, Dennis Ross, Joe Spratt, Dwight Stansel and Baxter Troutman. As of now, Durrell Peaden is the only sponsor of a similar bill in the senate, Senate Bill 1156.

\*\*\*\*\*

*Scott Randolph is a staff attorney with the Legal Environmental Assistance Foundation, Inc. (LEAF), a membership-based environmental organization located in Tallahassee, Florida. LEAF's*

## Agenda Item Cover Sheet

**Date:** February 18, 2004

**Agenda Item:** Closed Session pursuant to Ch. 286.011, F.S. –  
Putney v. Hillsborough County and EPC

**Description/Summary:**

Pursuant to Chapter 286.011, F.S., the Commission may meet in private with its attorney to discuss pending litigation to which the entity is presently a party before a court. EPC is presently a party in the case of Louis W. Putney and Jeanie T. Putney vs. Hillsborough County and Hillsborough County Environmental Protection Commission, Case No. 2001-742 G. The General Counsel wishes to convene a closed session with the Commission pursuant to the criteria set forth in the statute. Attached is a public notice of the time and date of the attorney-client session and the names of the persons expected to attend the session.

**Board Action Recommended:**

Conduct a closed attorney-client session relating to the pending litigation.



Notice is hereby given that on February 18, 2004, at approximately 4PM (immediately following the BOCC meeting), in the BOCC Back Conference Room, the Environmental Protection will go into closed session pursuant to Section 286.011(8), Florida Statutes. The Commissioners will discuss litigation strategies regarding Louis W. Putney and Jeanie T. Putney vs. Hillsborough County and Hillsborough County Environmental Protection Commission, Case No. 2001-742G. The meeting will last approximately one hour and will be attended by Chairman Jan Platt; Commissioners Pat Frank; Ronda Storms; Kathy Castor; Thomas Scott; Jim Norman; Ken Hagan; EPC Executive Director, Richard D. Garrity; EPC General Counsel, Richard Tschantz; and Assistant Counsel, Andrew Zodrow. Following the closed session, the EPC will reconvene in open session in these chambers if any formal action on this matter is required.

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BOARD OF COUNTY COMMISSIONERS  
HILLSBOROUGH COUNTY, FLORIDA

- - - - - X  
:  
IN RE: :  
LOUIS W. PUTNEY :  
v. HILLSBOROUGH COUNTY and EPC: :  
:  
- - - - - X

3:25 p.m.  
February 18, 2004  
2nd Floor Conference Room  
601 E. Kennedy Boulevard  
Tampa, Florida 33602

PRESENT:  
  
CHAIRMAN THOMAS SCOTT  
COMMISSIONER JIM NORMAN  
COMMISSIONER KEN HAGAN  
COMMISSIONER KATHY CASTOR  
COMMISSIONER PAT FRANK  
COMMISSIONER JAN PLATT  
COMMISSIONER RHONDA STORMS

REPORTER:  
  
EDITH PARADINE  
Notary Public,  
State of Florida

**ORIGINAL**

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APPEARANCES:

On Behalf of Hillsborough County EPC:

**RICHARD TSCHANTZ, ESQUIRE**  
**T. ANDREW ZODROW, ESQUIRE**  
1900 Ninth Avenue  
Tampa, Florida 33605  
(813) 272-5955

ALSO PRESENT:

Dr. Richard Garrity

C O N T E N T S

|                         | PAGE |
|-------------------------|------|
| Proceedings             | 3    |
| Certificate of Reporter | 44   |

1 MR. TSCHANTZ: I have some opening comments  
2 so -- for the record my name is Richard Tschantz.  
3 This is a closed meeting, the details of which  
4 are confidential under the authority of Section  
5 286.011 of the Florida Statutes and is not made  
6 public under the Sunshine Laws until the end of  
7 this litigation.

8 Florida law provides an opportunity for a  
9 public body to discuss, with its legal counsel, the  
10 strategies related to litigation expenditures and  
11 settlement negotiating -- negotiations pending  
12 litigation.

13 The subject of discussion is limited to that  
14 which was noticed, and that is, in this case, the  
15 litigation relating to Putney versus Hillsborough  
16 County and Hillsborough County EPC. And this  
17 discussion here today will deal only with the EPC's  
18 portion of this case.

19 The Commission will not be asked to take any  
20 official action in this closed meeting, but will be  
21 asked to vote on two action items in the open session  
22 after this discussion.

23 Nothing said in this meeting is off the  
24 record. A court reporter is taking down all of  
25 the discussion and anything that is recorded will

1 be transcribed, verbatim, and made public after the  
2 close of this litigation.

3 So with that, I would also put on the record  
4 that the Putneys were notified of this closed session  
5 being conducted.

6 So I would start -- and everyone has a packet  
7 in front of them, but let me start, before we go to  
8 the packet, to say who the Putneys are. The Putneys,  
9 Louis W. Putney and Jeanie T. Putney are the  
10 Plaintiffs.

11 Louis W. Putney is an attorney, he's a former  
12 president of the Hillsborough County Bar Association,  
13 and during the time that he was active he was also  
14 active in development, buying speculative properties  
15 and developing it. His son, Louis D. Putney, is the  
16 attorney that is representing his father and mother in  
17 this case.

18 We will be asking you all to take some action  
19 after the closed session to, number one, ratify a  
20 document that I'll discuss with you that has been  
21 issued in this case by the Executive Director, and  
22 two, if it's appropriate, if you think so, a  
23 settlement offer to the Putneys. But that is what  
24 we'll talk about. Those are the two things that we'll  
25 be heading toward.

1           So if you would look in the packet, the first  
2 document is a location map showing where this parcel  
3 of property is located that's the subject of this  
4 lawsuit. And it is on Highway 301. You'll see off  
5 to the right of the document, which is to the east,  
6 is the Tampa Bypass Canal and Interstate 75, and then  
7 to the south, at the bottom, horizontally across the  
8 bottom would be Interstate 4. And this is just north  
9 of the Southwest Florida Water Management District  
10 Office.

11           COMMISSIONER STORMS: And the Dallas Bull.

12           MR. TSCHANTZ: Just adjacent, next door to the  
13 Dallas Bull.

14           COMMISSIONER: NORMAN: How do you know that?

15           MR. TSCHANTZ: Just a statement, this is an  
16 inverse condemnation case. If a regulatory agency  
17 takes action on a landowner's request to develop its  
18 property to the point where the regulations take all  
19 or substantially all the value of the property, you  
20 can have an inverse condemnation, and that is what the  
21 case is about; an inverse condemnation action against  
22 not only EPC for its permitting process, but also the  
23 county, itself, for the natural resources permit  
24 issuance or non-issuance.

25           And we have to keep the two parties separate

1 because you are represented by Ray Allen and Rebecca  
2 Kert as to the county and the issuance of the other  
3 permit.

4 So with that I would just give you a good  
5 background, quickly, by going through the time line  
6 which is this document here. The Putneys bought the  
7 property in 1968. It's a 2 1/2 acre -- 2.4 acre  
8 parcel that is 100 percent wetlands. And they bought  
9 the parcel for \$3,000 at that time. It was not  
10 developed --

11 COMMISSIONER STORMS: And they're trying to  
12 sell it back to us for 25 million. They paid 3,000  
13 but they want 25 million for it.

14 MR. TSCHANTZ: At least three times he's asked  
15 to have the county buy the property through ELAPP.  
16 It was not developed, and in about 1984 is probably  
17 the first date that the wetlands, such as this, would  
18 have been regulated. And it was not developed up to  
19 that time.

20 1985 is when EPC's wetland regulations came  
21 into effect. 1987 and 1990 the Plaintiffs offered  
22 to sell the property to the ELAPP Program, it did  
23 not qualify and it was not sold, the county did not  
24 buy it.

25 August of 1999 was the first that the Plaintiff

1 applied for wetland impacts to Hillsborough County and  
2 to EPC, during the review of that process, started at  
3 that point, and then in October of 1999 the Wetland  
4 Division director at the time, which was Darryl  
5 Houghton, issued a letter that says that based on  
6 the fact that you have not demonstrated a  
7 justification to impact this property, impact the  
8 wetlands, and you have not provided any mitigation  
9 on top of that, that your application is denied.

10 November of 1999 Roger Stewart, the Executive  
11 Director at the time, approved that recommendation and  
12 made the denial from -- at the Executive Director's  
13 level, based on Darryl Houghton's letter a month  
14 before.

15 An appeal was taken by the Putneys and it  
16 was -- that was taken in December of 1999, and during  
17 the course of that it was concluded in May of 2000.

18 At this point the Hearing Officer's  
19 recommendation entered in the case, which is a key  
20 document in this trial that we're involved in right  
21 now, reversed the decision of the wetland director  
22 and the Executive Director as to that there was no  
23 justification to impact this property, meaning they  
24 said since it is 100 percent wetlands, you do have  
25 the right to impact those wetlands to get a reasonable



1 use of your property.

2 And that was done through the hearing process,  
3 with the acquiescence of the Legal Department and the  
4 Executive Director. So that was the reversal of those  
5 two prior letters, which now gave them the  
6 authorization to impact with the caveat that you  
7 provide mitigation, which the Putneys were of the  
8 position, we don't want to, we don't have to. We  
9 had the property before your rules.

10 So they did not take that reversal as an  
11 authorization, they continued to hold it out as --  
12 as still a denial because we don't have to mitigate.

13 The next month the EPC Board filed a Final  
14 Order approving that recommended Order. It was signed  
15 by Commissioner Platt as the Chairman of EPC.

16 The next move on the part of the Putneys was  
17 in August, just a few months later, they applied for  
18 a variance saying that your rules are a hardship to  
19 us. And the criteria there would be that they have  
20 to show that this is a hardship for them to mitigate  
21 on -- for this parcel of the impacts to their  
22 wetlands, and then they would also have to show that  
23 the underlying purpose of the mitigation rules could  
24 still be met in an alternative way.

25 For a number of reasons that was -- those

1           hurdles were not met. And I would take this point  
2           to -- just to tell you, the application for that  
3           variance had an affidavit by Mr. Putney, the property  
4           owner, saying that the property was worth \$419,000  
5           so -- that was an affidavit saying that the property  
6           was worth \$419,000.

7                       And I say that because had that not been filed  
8           as a sworn statement, EPC may have had a different  
9           take on whether or not the variance should have been  
10          granted. But with that being sworn to and given to  
11          us we said well, then certainly with this amount it's  
12          not a hardship for you to do mitigation on the  
13          property.

14                      And they were also, still, not proposing any  
15          alternative way to meet the rule, they were just  
16          saying, we just want the variance. And so it, again,  
17          was denied by the Board in August of 2000.

18                      Then in -- his next step in December, then, was  
19          to take to the Land Use Hearing Officer or -- well,  
20          the Land Use Hearing Officer, then, for the county  
21          part of the permit, which has to wait for the EPC's  
22          decision, they then denied the application for the  
23          natural resources permit.

24                      And after that, then the Putneys filed a  
25          lawsuit in Circuit Court against both the county --

1 no, I'm sorry, at the time they just sued the county,  
2 based upon the denial of the natural resources permit,  
3 they did not sue EPC at all.

4 And it wasn't until almost a year and a half  
5 later, in August of 2002, that -- through proceedings  
6 in the case, the judge kind of gave the Putneys an  
7 indication, EPC is a critical part of this, and in  
8 December of 2002 EPC was finally brought in and filed  
9 its answer in the lawsuit. So we were brought in very  
10 late, even though we had a lot to do with this up  
11 front.

12 COMMISSIONER STORMS: Pretty much everything.

13 MR. TSCHANTZ: Yeah, because the county's part  
14 of this was wait and see if EPC is going to allow this  
15 and then we'll -- they had some more conditions of  
16 their own to deal with, but they don't get to that  
17 stage until EPC comes in.

18 In January of 2003, now that we are in the  
19 lawsuit, we entered another document that's important  
20 in the case, and it was an Administration Order by  
21 Dr. Garrity, now proposing some reasonable mitigation  
22 for the Putneys that would give them an opportunity to  
23 reasonably develop their property and would also  
24 provide protection for the resources.

25 And that's an Administrative Order that we'll

1 talk about in a little bit. And it is the document  
2 that we want -- one of the action items on today, to  
3 ratify.

4 Shortly after we got into the suit we filed  
5 this, knowing that in March we had a summary judgment  
6 motion to have EPC dismissed out of the lawsuit, based  
7 upon the fact that they had the authorization to  
8 justify 100 percent of the property to impact it,  
9 and then with the January 2003 Order, to provide  
10 reasonable mitigation, they had everything they  
11 needed to do what they wanted to do.

12 With that, Judge Barton, who was the first  
13 judge on the case, saw these -- the proceedings and  
14 the way the case was, and he dismissed EPC out of the  
15 suit, based on summary judgment, saying there's no  
16 issue here, they gave you what you want to do.

17 Unfortunately, he made some comments there that  
18 said that he would be inclined to do the same for the  
19 county, which they hadn't filed a motion yet, and with  
20 that, that was challenged as a bias statement by the  
21 Putneys and he -- the Putneys asked to have Judge  
22 Barton recuse himself. And Judge Barton felt that  
23 he had to because of that mistake. And that was done  
24 in -- right after he dismissed EPC out.

25 COMMISSIONER STORMS: Like getting called back

1 from a touchdown.

2 MR. TSCHANTZ: Right. So we were out. And  
3 then within the time to rehear that motion, there  
4 is a new judge assigned, Judge Arnold, and when Judge  
5 Arnold heard the exact same facts, he does not dismiss  
6 EPC, he says no, you're in the case, I'm not going to  
7 dismiss you out. Because -- under the same facts,  
8 same argument, just different judge, you get a  
9 different result. So we're in it, again.

10 And then in October of 2003, again, we see  
11 an application by the Putneys to have ELAPP buy the  
12 parcel which is -- buy the parcel from them. And  
13 that's the third time that they've requested that.

14 Discovery has now gone on very intensive, and  
15 it's almost concluded. We now have, on March 2nd,  
16 a renewed motion for summary judgment, based upon  
17 some -- some statements that we've been getting  
18 throughout the discovery process by the Plaintiffs'  
19 own witnesses that are pretty much favorable to us,  
20 and we're going to try again, with Judge Arnold.

21 We don't know what is going to happen there,  
22 whether he'll make any difference. It's not,  
23 probably, a good chance of him changing his mind,  
24 but at least maybe we can get him to decide two  
25 very important issues in this case, as to whether

1 or not these documents that were issued, the first  
2 June 2000 Final Order that the Board issued allowing  
3 impacts, and then the second, January 2003  
4 Administrative Order by Dr. Garrity, setting a  
5 reasonable amount of mitigation.

6 We'll maybe get him to at least decide whether  
7 these are documents he's going to accept, which would  
8 make the case very strong for us --

9 COMMISSIONER STORMS: Sell or not sell.

10 MR. TSCHANTZ: -- or whether he'll open them  
11 up and throw them up. And so these are two documents  
12 we're going to talk about here.

13 The trial then is set for March 29th, if we're  
14 still in it after the March 2nd hearing.

15 So I wanted to go to the next page that you  
16 could kind of follow along. And I want you to hear  
17 the Plaintiffs' best-best case, then I'm going to  
18 give you EPC's defense to that, and then I'm going  
19 to give you both sides' vulnerabilities because you  
20 need this to make your decision, we think.

21 What the Putneys are going to say is that they  
22 were denied the right to develop the property by the  
23 EPC Wetland Director letter of October 1999, and then  
24 Roger Stuart's November 1999 letter. And if the case  
25 ended there he would be correct, that was -- those two

1 letters added up to a complete denial.

2           However, as you know, throughout the appeal  
3 process, the result changed to allow those impacts  
4 if they mitigated. What they are going to say then,  
5 since their property was 100 percent wetlands and  
6 they got those two letters, and the letters found  
7 no justification that all of the economic value of  
8 their property was in -- was then taken.

9           So the Hearing Officers -- they're going to  
10 continue to say that the Hearing Officers and the  
11 EPC's June 2000 letter allowing those impacts  
12 shouldn't be considered. He's going to argue to  
13 the judge that they were improperly entered. I'm  
14 going to show you that Order in a minute.

15           And they're going to say that -- that  
16 recommended Order was crafted and drafted by the EPC  
17 attorney, and then -- and there weren't any grounds  
18 for that. So it's an odd argument that even though  
19 we got something we were asking for, we don't want it  
20 and it's no good. And that's a big hurdle.

21           But he's going to argue to the judge that that  
22 is not a valid Order. He's going to continue on with  
23 the argument that the Administrative Order of January  
24 2003 by Dr. Garrity that set some limits on  
25 mitigation and -- is also not valid and that in some

1 way that may even been an admission that we had a  
2 partial taking, at least, from the time of the June  
3 2000 Order to the January 2003, when we issued  
4 something that wrapped it all up.

5 They're going to argue that if they can't win  
6 it outright as a full, complete taking of our  
7 property, based upon problems in their case, they'll  
8 say, at least, it was a partial taking and they'll try  
9 to get value for that.

10 So if the Court dismisses the January 2003  
11 Order, which did set mitigation credits that could  
12 be purchased, then the Putneys would have an argument  
13 and here's what's going to happen if that January 2003  
14 Order is gone, they're going to say -- and their  
15 appraiser has it now appraised, before development,  
16 at \$95,200, and that's appraised value, prior to it  
17 being cleared and filled, that's as it sits there  
18 right now.

19 But they're going to have experts testify that  
20 mitigating under EPC's normal rules, acre for acre  
21 creation, is going to cost them 138,500, and therefore  
22 they're at a loss, overall, of 43,300, and it's due to  
23 EPC's regulations. So, judge, we should win. So  
24 that's the Putneys' best argument.

25 Our defense to that is that -- on the next



1 page -- is that -- those -- the June 2000 Order is  
2 a valid Order and it allows 100 percent of the  
3 property to be impacted, and it has to be subject  
4 to adequate mitigation, though --

5 COMMISSIONER STORMS: Standard operating  
6 procedure for the judge, when he's going to rule,  
7 is say okay, draft it, give me a sample order.  
8 Other side, you draft it. You can't have the  
9 prevailing side draft it because they'll put in  
10 all kinds of really great stuff and so the other  
11 side drafts it, the two attorneys work, no, that  
12 didn't go in, fine, we'll take it to the judge.

13 And then they bring it and the judge signs it.  
14 That's standard operating procedure.

15 MR. TSCHANTZ: In fact, the Putneys did an  
16 Order on their own and the Hearing Officer did not  
17 accept that because he found that to be the losing  
18 side.

19 COMMISSIONER STORMS: Right.

20 MR. TSCHANTZ: -- she found that to be the  
21 losing side. So it's not a good argument, it's  
22 their biggest hurdle.

23 So we're going to argue to the judge, number  
24 one, you know, it's -- well, first of all we're going  
25 to tell the Court that you can't challenge this

1           because we have case law that says that Administrative  
2           Orders that are issued by you all are appealable in  
3           a certain route and they're not challengeable in a  
4           Circuit Court action in this kind of proceeding so  
5           we're going to say that he can't challenge it, but  
6           you don't ever know what a judge is going to do so --  
7           but we think it's a valid Order.

8           We also think the January 2003 Order is valid.  
9           It was not appealed by the Putneys, and they had a  
10          chance to do that, and they let that mitigation Order  
11          that we issued, which put the limits up there, costs  
12          to mitigate, into the case. And that shouldn't be  
13          invalidated by the Court, either.

14          So if both Orders -- for our side of the case,  
15          if both Orders are upheld, you have a \$95,200  
16          appraised value, which our appraiser agrees, that's  
17          the value as the property sits there now, 24,000 cost  
18          is the upside for mitigating, and then you have --  
19          still have a remaining of \$71,200 on the property.

20          So undertaking this law we have not deprived  
21          the Putneys of all or substantially all the value of  
22          their property.

23          MR. GARRITY: Rick, can I just say something?  
24          We did, in that Administrative Order, say that they  
25          could pay \$24,000 into the ELAPP and that would be

1 the mitigation for the 2.4 acres. So \$24,000.  
2 They're still saying that the mitigation costs are  
3 \$138,000 so they're not acknowledging that the offer  
4 that we made of mitigation is something that they can  
5 do.

6 MR. TSCHANTZ: Again, because they don't really  
7 want what they're asking for, they want the county to  
8 bail them out, is our opinion.

9 So ultimately, the weak part of the Putneys in  
10 their challenge is that they're going to have to have  
11 the judge reject both of these Orders.

12 And the judge is going to have to find that  
13 the impacts are not justified and that mitigation  
14 is not available, or he's going to have to believe  
15 all of the Plaintiffs' experts and say that mitigation  
16 is costing 138,000, in spite of what the agency is  
17 saying you can do. So that's -- that's a big  
18 challenge for the Putneys.

19 Now, it's not to say that we are not without  
20 some weaknesses in our case, and I want to tell you  
21 what those are.

22 The Putneys are going to argue that the January  
23 2003 Order -- and that's the second order in your  
24 book, it's the one that says Administrative Order --  
25 that is not a final -- it's not a Final Order. And

1 so, judge, you can't rely on this.

2 And the reason he's saying that, and there  
3 is some merit to that, is that we filed this as soon  
4 as we found the real value of the property, and just  
5 after we were brought in the case. And we offered  
6 several mitigation options for the Putneys'; to pay  
7 into a mitigation bank, to buy his own uplands for  
8 preservation or to pay into ELAPP for acquisition for  
9 preservation, all done according to our rules.

10 The flaw, if you can say it that way, is that  
11 Putney has found, through the depositions, is that  
12 the upland preservation, as you all know, needs to  
13 be approved by you as a group, as a Board. And now  
14 we didn't do that, due to time factors, but I did go  
15 around to each Board member and let you know that we  
16 were doing that during the course of this litigation.

17 And I spoke to you about that. But we weren't  
18 too concerned about that because the Putneys don't  
19 want it and they haven't accepted it. And usually you  
20 bring those items to the Board when someone wants that  
21 type of preservation. So we were comfortable feeling  
22 that if they ever accepted this, we would then bring  
23 it to the Board as a group at that time.

24 However, it's an awkward position for us to  
25 be able to tell the Court -- we can't really respond

1 to the Court that it is totally fine with them because  
2 they're going to say, judge, if we want that deal,  
3 it's still got to go to the Board, so you don't know  
4 if you have it -- have something solid here or not.

5 And we don't want that to happen, that's one of  
6 the main reasons we wanted a closed session today is  
7 because one action that we wanted to ask you to take  
8 is to make a motion, once we go out into open session,  
9 to ratify this Administrative Order dated January  
10 29th, 2003. It will help us at the summary judgment  
11 and --

12 COMMISSIONER STORMS: So you can tell the  
13 judge, yes.

14 MR. TSCHANTZ: We can tell the judge, on  
15 February 18th, at a closed session with the Board,  
16 they came out in public and they did ratify this  
17 Order. And it will help us, for summary judgment  
18 purposes, still may not win the day there, but it  
19 will certainly make our case more solid at trial.  
20 So that is one thing that we're going to ask and  
21 that's one weakness we have in the case.

22 The other point is that the Putneys have  
23 challenged the fact that we are even allowed to give  
24 them mitigation credits. If you look at chapter -- or  
25 paragraph 13 --

1                   COMMISSIONER STORMS: Rick, hold on a minute on  
2 that. Does it get entered in as evidence, anyway?

3                   MR. TSCHANTZ: It's going in one way or the  
4 other, yes.

5                   COMMISSIONER STORMS: Okay. So -- no, I mean  
6 any ratification that we do, since it's so late in the  
7 game, I mean --

8                   MR. TSCHANTZ: Well, we're not even nearly  
9 finished with discovery, we haven't had to swap  
10 exhibits yet. But I have to say that, you know,  
11 since we're very close to the end of discovery,  
12 we'd have to disclose this to him and give him an  
13 opportunity to get the minutes of this meeting and --  
14 you know, the vote, you know, when we go out. And  
15 he would be able to question us, either legally or  
16 through testimony.

17                   COMMISSIONER STORMS: Okay.

18                   DR. GARRITY: If the Board ratifies it, is that  
19 appealable by Mr. Putney?

20                   MR. TSCHANTZ: There's a -- I think anything  
21 the Board does could be appealable, if he wanted to  
22 appeal that he could put a halt to the trial going  
23 forward and take this to the 2nd DCA but I feel real  
24 comfortable there, that he don't have any problems  
25 with that.

1           But I -- you know, he hasn't challenged any of  
2 these administrative things by appeal, yet, so I don't  
3 know what he'd do here, though. But we think that  
4 this is something that we need to clear up as we head  
5 to trial.

6           And again, his second point is, is that your  
7 rules don't allow you to give me an Order such as  
8 is in paragraph 13 here, that allows me to pay in  
9 mitigation credits. He's challenging our ability  
10 to -- to offer this type of mitigation to him because  
11 again, he doesn't want it.

12           And again, we disagree with him on that, our  
13 rule doesn't specifically say, black and white, you  
14 can pay these mitigation credits, but two places in  
15 our rules allow -- allow for us to have mitigation  
16 plans be accepted.

17           And a mitigation bank is a mitigation plan.  
18 So we would not prevent anyone from paying mitigation  
19 money into a mitigation bank. There are several --  
20 well, there's one in Hillsborough County now that's  
21 being developed, it's not been approved yet but maybe  
22 by the time the Putneys would take advantage of it, it  
23 would be available to them.

24           So -- and again, we have this new Florida  
25 Uniform Mitigation Assessment methodology that's

1           gone into effect in February, which allows -- and  
2           we have to amend our rule to accept that. And it  
3           allows things like this and lots of other alternatives  
4           that we previously haven't had.

5           COMMISSIONER FRANK: You know, you do not  
6           legally have the right to poll us for anything. And  
7           I guess I'm a little bit concerned with what you've  
8           said about this court order because sometimes you come  
9           in and tell us stuff and I'll sit and listen, but it  
10          doesn't mean that I'm for it, because I would never be  
11          for doing this whole -- in fact, I was sort of shocked  
12          to see this, that that had even been in here without  
13          letting them demolish the whole piece of property.  
14          And I don't recall ever voting on that, either.

15          MR. TSCHANTZ: Well, that was -- the  
16          demolishing of the piece of property, that was the  
17          hundred percent wetlands --

18          COMMISSIONER FRANK: Mitigation.

19          MR. TSCHANTZ: That was -- that ability to  
20          impact that entire parcel was the result of the  
21          hearing that was held, that the Board approved by  
22          the Final Order. It wasn't the mitigation, but it  
23          was the ability to go in and impact the entire parcel  
24          was the first Order that you all had approved.

25          COMMISSIONER FRANK: Okay. So that was done in



1 an open meeting.

2 MR. TSCHANTZ: Yes, that was done -- and there  
3 was no attempt to poll. I wanted to be sure, as we  
4 went forward in the case, that the Board was  
5 comfortable with us and, you know, not trying to  
6 poll but getting a comfortable feeling of how we were  
7 going forward in our case is why I went around to each  
8 of the Board members. But, you know, I think the best  
9 thing to do --

10 COMMISSIONER STORMS: Nobody threw ashes on  
11 their head and ripped their clothes and said  
12 absolutely not; in other words.

13 MR. TSCHANTZ: Right.

14 COMMISSIONER STORMS: Okay.

15 MR. TSCHANTZ: The hundred percent, though,  
16 came from the Hearing Officer, too. And once she  
17 made that as a finding in her recommended Order, we  
18 couldn't even overturn that because that was a finding  
19 of fact in a recommended Order. So that was done  
20 through a hearing, outside.

21 But -- and our rules clearly allow us to offer  
22 upland preservation. And you can either pay for that  
23 yourself and go out and buy some uplands and preserve  
24 it at a 3:1 ratio for your impacts, or you can go  
25 ahead and let -- pay that money into ELAPP and let

1           them go out and do an acquisition and preserve it.

2                   And Commissioner Storms would know this case  
3           best, but the Collins case, Peter and Maria Collins  
4           was a case that started before the Putneys. And the  
5           Board fully approved. And that was -- the vehicle  
6           there was a waiver, a variance process.

7                   We allowed them to do the exact same thing that  
8           we're allowing the Putneys do here, and that was to --  
9           and since they didn't have a place to mitigate, we  
10          allowed them to pay the same amount, per acre, into  
11          ELAPP to do it.

12                   So there's precedent here. And there's many  
13          cases we've brought to the Board for upland  
14          preservation. So the Putneys have seen all of those  
15          cases through the course of discovery. And again,  
16          this new Uniform Wetland Mitigation program --

17                   Anyway, I wanted to point out our areas of what  
18          I might say are soft in the case. Again, the summary  
19          judgment is set for March 2nd. Should there be an  
20          offer made in the case is where we're coming down to  
21          the final point. And --

22                   COMMISSIONER STORMS: Should we settle or not?

23                   MR. TSCHANTZ: Well, I will say this.

24                   COMMISSIONER FRANK: Will they settle?

25                   MR. TSCHANTZ: I don't know what they'll do but

1 all trials do cost us money to defend. This is an  
2 expert intensive case. It goes into stage one to find  
3 out whether we actually have a taking. And if we do,  
4 even if it's a partial taking, it goes into phase two  
5 where you have a twelve person jury and you have to  
6 put on all the appraisers and planners and --

7 MR. ZODROW: Eminent domain.

8 MR. TSCHANTZ: -- Eminent domain. It's an  
9 eminent domain type of jury to where that gets very  
10 intensive and it's going to get expensive. I would  
11 estimate that we would spend, just to win, 50 to  
12 \$75,000 for the payment of our experts and having  
13 to depose his experts. So we've got that.

14 And then that's not counting -- and again, I  
15 can't go into this part of the case, but it's not  
16 counting what the county attorney's office might be  
17 doing, as well, their staff time. They don't have any  
18 experts, we have all the experts on our side. But --

19 COMMISSIONER CASTOR: Does the prevailing side  
20 get fees and costs?

21 MR. TSCHANTZ: Yes. If they even get anything,  
22 if they get a partial taking, even then, we would have  
23 to go back and then --

24 That's my next point, there is a risk at any  
25 trial, if the judge happens to throw out one of these

1 documents or believe their experts over ours, and even  
2 if he wants to have a sympathy factor here and he  
3 finds at least a partial taking, that's worse than the  
4 property itself because that's going to be at least  
5 \$100,000 in the Putneys' attorneys fees, there's going  
6 to be statutory interest from the time -- whatever  
7 date the judge decides that this was a taking.

8 And so --

9 COMMISSIONER FRANK: But what about the  
10 precedent?

11 MR. TSCHANTZ: The precedent is a problem  
12 because I would say that anybody that is similarly  
13 situated, that might have property before the rules  
14 came into effect, a large amount of wetlands on the  
15 property, we feel that they should come and sue the  
16 county --

17 COMMISSIONER STORMS: How many properties are  
18 there like that, Rick; do you all know?

19 MR. TSCHANTZ: I really -- I was trying -- I  
20 was anticipating that question, I just -- I know that  
21 in the southeast portion of the county there may be a  
22 lot of family property that's been around so --

23 COMMISSIONER FRANK: I've got a wetlands map in  
24 my office that has them all --

25 COMMISSIONER NORMAN: Isn't this a unique

1 situation, though, that -- because of the family  
2 and the attorney in the family is the one suing  
3 us, so they don't have the legal liability that  
4 we're having.

5 MR. TSCHANTZ: Right.

6 COMMISSIONER NORMAN: In other words --

7 MR. TSCHANTZ: Yeah. They're basically not  
8 really charging fees to each other but yet the judge  
9 is going to --

10 COMMISSIONER NORMAN: It's not costing them  
11 anything to pursue this.

12 MR. TSCHANTZ: But the judge is going to grant  
13 it.

14 COMMISSIONER NORMAN: Right, I know. I guess  
15 that's why they can continue to push it, under the  
16 circumstances, because I --

17 MR. TSCHANTZ: Right. I don't think if you  
18 did -- if you didn't have a situation like that, I  
19 don't think this case would be moving forward as it  
20 is.

21 COMMISSIONER NORMAN: Right.

22 MR. TSCHANTZ: So my only --

23 COMMISSIONER CASTOR: Rick, excuse me. But if  
24 we prevail will we recoup our costs for all of our  
25 experts?

1 MR. TSCHANTZ: For the experts -- no.

2 MR. ZODROW: We can ask but I doubt it.

3 MR. TSCHANTZ: Eminent domain, as you might  
4 know, is largely favoring the property owners over  
5 the government, in these kinds of proceedings.

6 But my only suggestion -- oops, sorry.

7 COMMISSIONER FRANK: I was just going to say  
8 that if we settle, if we don't go to trial and we  
9 settle, we still are setting precedent because other  
10 property owners are going to pick up on that.

11 MR. TSCHANTZ: They might. That's the risk  
12 you have to weigh against the upside of us -- my next  
13 point was that if we do lose it could be anywhere from  
14 3 to 400,000, when you add in statutory interest.

15 So you have to weigh what precedent are we  
16 risking as opposed to what numbers we are risking.  
17 And my thought was, if you wanted to at least offer  
18 sort of a nuisance value offer amount of -- 75,000  
19 was the figure that I had recommended to Dr. Garrity,  
20 because we're going to spend at least that much even  
21 to win. And he might take it. And if he takes it,  
22 our risk goes -- oh, but then we would have the risk  
23 of a precedent.

24 COMMISSIONER NORMAN: Well, don't we have a  
25 precedent, also, if we lose, then everyone has the

1 precedent that this -- they have case law then, they  
2 have a case, they have --

3 MR. TSCHANTZ: Yeah.

4 COMMISSIONER NORMAN: And then they can really  
5 beat us with a stick.

6 COMMISSIONER STORMS: If we lose it shows up in  
7 the paper and everybody knows about it all at the same  
8 time.

9 COMMISSIONER NORMAN: But every attorney will  
10 know --

11 COMMISSIONER STORMS: And every attorney knows  
12 about it. If you settle, then they go and they learn  
13 it at the Bar Association.

14 MR. TSCHANTZ: There's one more thing to  
15 consider at this point, and it's -- and now again,  
16 I can't represent anything for the County Attorney,  
17 but there are costs associated with that natural  
18 resources permit, too, such as Flood Plan Mitigation  
19 Compensation issue could be an additional cost that  
20 would be put on this property owner.

21 And at this stage of the game, during our  
22 depositions just from -- it's not our part of the  
23 case, but as we sit in and listen, that issue has  
24 not been tied up as to whether or not they would  
25 have to spend -- in other words, for every cup of

1 money -- or every cup of dirt you take out of there  
2 to fill, you have to go compensate elsewhere, and that  
3 can be a significant amount of money.

4 So if the Putneys were to be able to convince  
5 the judge that here you got EPC's regulations and then  
6 the county's regulations on top of it, you add those  
7 two together you've taken my property. So that --  
8 that again, I can't advise you on, but I wanted it  
9 brought out, at least to know that it's there.

10 COMMISSIONER FRANK: Now what is Hillsborough  
11 County -- what is the status of their situation? Can  
12 I ask that in this meeting? Because doesn't that  
13 somehow impact --

14 MR. TSCHANTZ: After we entered our January  
15 2000 Order they went ahead and issued a Natural  
16 Resources Permit. And one of the conditions in  
17 there was that you have to comply with the Flood  
18 Plan Compensation, which could add a lot. But there's  
19 been some testimony by a county employee that maybe  
20 the maps have been changed and you might not. That  
21 issue is up in the air. But what --

22 COMMISSIONER PLATT: Are they in the lawsuit?

23 MR. TSCHANTZ: They're in the lawsuit, they're  
24 in it, the trial is the same --

25 COMMISSIONER STORMS: So if we settle then



1 they're left out there because --

2 COMMISSIONER PLATT: So why aren't we all  
3 meeting together?

4 MR. TSCHANTZ: Because we couldn't get  
5 together. There is case law out there that says that  
6 if two different governmental agencies, which we are,  
7 join together to -- you know, to cause us to take our  
8 property, you can definitely add those together, and  
9 so Ray Allen and I are very careful to keep the  
10 entities separate.

11 MR. ZODROW: I'm sure any settlement offer --  
12 and I might be speaking for Rick -- but would be in  
13 consideration of him withdrawing everything,  
14 dismissing the entire case.

15 MR. TSCHANTZ: If we were to come out into the  
16 open session and say -- my motion would be to say that  
17 you would grant the Executive Director the authority  
18 to make a settlement offer to the Putneys not to  
19 exceed the amount discussed in the confidential  
20 attorney/client session because -- we might want to  
21 say up to 75,000, because if we go to the March 2nd  
22 summary judgment and we get dismissed, we're not going  
23 to offer it at all.

24 But if we get those documents solidly supported  
25 in the case, you know, maybe we don't want to offer

1 all that much, maybe the Putneys see a weaker case and  
2 then they would settle for less but -- so we don't  
3 want to go out and say that -- any amount out in the  
4 public, but we could get authority to have Dr. Garrity  
5 offer, and we could determine that amount here, or you  
6 could just not do it at all, which is okay with us.

7 COMMISSIONER CASTOR: Because you still have to  
8 return to the Board --

9 MR. TSCHANTZ: We still have to return to the  
10 Board. You can make no motion as to settlement, just  
11 a motion to ratify that document, and end it, or you  
12 can go ahead and say, authorize a settlement offer,  
13 for Dr. Garrity to make that would resolve the case.

14 And we would hold that until after the March  
15 2nd summary judgment hearing, we wouldn't do anything  
16 until we kind of get a ruling from the judge as to if  
17 we're strengthened or weakened by that ruling but --

18 DR. GARRITY: They do still have to go to  
19 SWFWMD, after all this is over, if they're successful,  
20 and go through the whole same process because SWFWMD  
21 also asked for mitigation.

22 MR. TSCHANTZ: One of our defenses is that they  
23 haven't brought all the right parties to the table,  
24 they just -- they don't want that, they just want  
25 Hillsborough County to pay, get them out of this

1 and -- because even if they got our permits, they  
2 still have other entities to worry about.

3 COMMISSIONER NORMAN: Talking about a  
4 settlement. Now, if they settle, accept the  
5 75,000, as an example, it's not over. The  
6 Hillsborough County's suit is still --

7 MR. TSCHANTZ: No, we wouldn't --

8 COMMISSIONER NORMAN: You would settle them  
9 both.

10 MR. TSCHANTZ: We would make that settlement.

11 COMMISSIONER NORMAN: Because that was along  
12 with what Platt was saying, they're not here, we offer  
13 the settlement, but that makes the whole suit go  
14 away.

15 MR. TSCHANTZ: No, we would -- through our  
16 negotiations we would make sure that it --

17 COMMISSIONER NORMAN: Because I don't want  
18 them double-dipping. And ultimately you all have  
19 that connection, because they do fund you, BOCC  
20 funds you, so they -- so I want one settlement  
21 that would be that ratifier root.

22 MR. TSCHANTZ: We wouldn't do it any other  
23 way.

24 COMMISSIONER NORMAN: Okay.

25 COMMISSIONER FRANK: Did I hear you say that

1 this would end up in a jury trial?

2 MR. TSCHANTZ: If they find any sort of taking  
3 at all it goes to a jury for the amount of money the  
4 property is worth.

5 COMMISSIONER FRANK: Only for that?

6 MR. TSCHANTZ: Just for that. It's just, how  
7 much do we pay, not the finance of taking. That's the  
8 more expensive part to defend.

9 See, the Putneys want this property to be  
10 really low, at that stage, to get a taking. And then  
11 when they get a taking they want it to be really high  
12 so they get paid a lot. And they're having a hard  
13 time with this but again, this judge doesn't, it  
14 seemed to us, as -- as prone to -- I don't know how  
15 to put it but --

16 COMMISSIONER STORMS: He's not sympathetic.

17 MR. TSCHANTZ: We don't know what he's going  
18 to do. And if he were to feel some feeling that the  
19 Putneys don't have a parcel there that's worth  
20 anything, and the regulations are regulating them  
21 right out of the value, he might go that way, I  
22 just -- I don't know.

23 I feel -- if you wanted me to give you a  
24 percentage, I would say we have a 70 percent chance  
25 of success here. The 30 percent chance happening of

1 a loss could be quite expensive for the county, it  
2 could get up into 3 and 400,000, and that's the part  
3 that I wanted to lay out for you all so you know where  
4 we are. You know we're pretty comfortable with the  
5 case --

6 COMMISSIONER STORMS: 70, is that a D.? I  
7 think that's a D.

8 MR. TSCHANTZ: No, I think that's pretty good.

9 COMMISSIONER STORMS: Is that a C.?

10 MR. TSCHANTZ: If we would lose, then we would  
11 ask you for authority to appeal. And then I think our  
12 chances on appeal -- I think the case law -- I think  
13 we win, but I want that relatively large amount of  
14 money to be told to you all as the risk. And it's --  
15 to try to get whether or not you want to leave some  
16 sort of a nuisance kind of offer to them.

17 COMMISSIONER FRANK: My feeling would be a  
18 nuisance settlement would be fine, just to start, but  
19 if you get beyond a point where it's big bucks, then I  
20 say dig your toes in.

21 COMMISSIONER NORMAN: Up to 75 is what  
22 you're --

23 MR. TSCHANTZ: And we're going to spend that,  
24 anyway.

25 COMMISSIONER NORMAN: Yeah.

1                   COMMISSIONER CASTOR: That's a little high for  
2 me because I think we have a very strong case, I think  
3 you've done a good job and I -- that's a little bit  
4 high. And I know that you will probably start  
5 negotiating, if we don't lay out an amount, but we  
6 give you the authority to --

7                   MR. TSCHANTZ: Up to.

8                   COMMISSIONER NORMAN: Up to.

9                   COMMISSIONER CASTOR: Then if it comes back  
10 higher, then any of us can vote against.

11                  COMMISSIONER STORMS: Kathy, you get to offer a  
12 judgment, though. I mean, if you go higher, you know,  
13 at some point you get the pro, in my opinion, of  
14 getting close to the offer of judgment.

15                  DR. GARRITY: I think we've done everything  
16 correctly and I feel like we have a very strong  
17 position.

18                  So at first I was thinking that a settlement  
19 is not in order because we've basically given them  
20 what they wanted. And they can use their land. And  
21 the mitigation offer is extremely reasonable,  
22 including the money into ELAPP. But I think probably  
23 it is in the best interest of the county to offer an  
24 amount of money, as Commissioner Norman had said, to  
25 settle on the nuisance factor, up to 75.

1                   COMMISSIONER PLATT: And what precedent does  
2 that set? And do we get the land?

3                   MR. TSCHANTZ: We do get the land. And I  
4 talked to Kurt Grimley about that, what would you  
5 do with it, and he said that there are some  
6 possibilities there to use it. He said well, do  
7 we still get that mitigation deal. And I said yeah.  
8 And he said well, if the county wants a fire station  
9 out there, could use it for storm water collection,  
10 drainage --

11                   COMMISSIONER PLATT: No, no, no. And you all  
12 are supposed to be protecting the environment and  
13 you're coming up with all that stuff?

14                   MR. TSCHANTZ: I didn't talk to Mike Kelly.  
15 I didn't know what --

16                   COMMISSIONER PLATT: Gosh. I'm going to be  
17 concerned about you all negotiating anything.

18                   COMMISSIONER NORMAN: Go get them, man.

19                   MR. TSCHANTZ: I just wanted to say, what's the  
20 county going to do with it, Kurt. And then Kurt  
21 started answering. I'm not -- I didn't get to Mike  
22 Kelly. He says, talk to Mike Kelly. Would we be able  
23 to resell it and recoup some of the money? Well, it's  
24 not worth a lot.

25                   COMMISSIONER STORMS: Some unsuspecting person,

1           hey --

2           MR. TSCHANTZ:  Somebody from up north.

3           You know, I don't know what we would do, we  
4 would have the property after this.

5           COMMISSIONER PLATT:  But what about the  
6 precedent?

7           MR. TSCHANTZ:  The precedent means if -- again,  
8 whenever you talk about a precedent you have to have  
9 something that's pretty much the same case for it to  
10 be a precedent.  If you have a hundred percent  
11 wetlands and you bought it before all rules went into  
12 effect, I think you're getting to set a precedent.

13          COMMISSIONER NORMAN:  But also, if we fight  
14 this and lose, the precedent is, give a hundred  
15 percent wetlands, everybody is going to start coming  
16 after us.

17          COMMISSIONER PLATT:  Yeah, but see, I don't  
18 see how we can lose because the general public loves  
19 wetlands and the general public knows that it's the  
20 taxpayers, them, that are going to have to pay this  
21 bill, and if it's public knowledge that these people  
22 paid -- how much for the land?

23          MR. TSCHANTZ:  3,000.

24          COMMISSIONER PLATT:  \$3,000.  The public is not  
25 dumb.



1           COMMISSIONER CASTOR: And they keep coming back  
2 to ELAPP, they keep coming back to the county --

3           COMMISSIONER PLATT: Yeah. I mean, I just  
4 don't think they have a leg to stand on with a jury.  
5 I mean, I think people are too smart.

6           COMMISSIONER FRANK: Yeah, I agree with you but  
7 I -- the only thing that concerns me is if we're going  
8 to spend 50, 75,000, anyhow, and there is some chance  
9 of losing, why not, you know --

10          CHAIRMAN THOMAS: Settle.

11          COMMISSIONER FRANK: -- settle and get your  
12 costs neutralized.

13          COMMISSIONER STORMS: Rick, what about the  
14 offer of judgment?

15          COMMISSIONER FRANK: If it is not publicized --

16          MR. TSCHANTZ: That's a question of where if he  
17 doesn't accept the offer, he could -- and he doesn't  
18 get at least that much at trial, there's a possibility  
19 that he would not get any fees after that point.

20          COMMISSIONER STORMS: Which would be where the  
21 bulk of the fees would be, because you'd be going to  
22 trial.

23          MR. TSCHANTZ: He's going to say the bulk of  
24 the fees have been since 1999. He's been working on  
25 this for years.

1 COMMISSIONER STORMS: Blah-blah-blah.

2 MR. TSCHANTZ: He's going to say the least  
3 amount of the fees come from here forward.

4 COMMISSIONER FRANK: Well, where are his work  
5 papers, let's see them.

6 MR. TSCHANTZ: Yeah.

7 DR. GARRITY: Just to clarify, if they take the  
8 75,000 do they still -- do they still have the ability  
9 to use the Administrative Order which we've issued and  
10 keep the land and pay the 24,000?

11 MR. TSCHANTZ: No. We get the property,  
12 they're out with just that money. In an inverse  
13 that gives us the title to the property.

14 MR. ZODROW: Condemns the property, we own  
15 it -- the government owns it.

16 COMMISSIONER STORMS: So you need us to ratify  
17 the thing.

18 MR. TSCHANTZ: The very last page is a  
19 motion --

20 COMMISSIONER CASTOR: And just authorize Rick  
21 to --

22 MR. TSCHANTZ: Yeah, I wouldn't say the amount  
23 because Mr. Putney might be out there listening so --  
24 I'm sorry, commissioner, I was talking.

25 COMMISSIONER CASTOR: Let's authorize Rick to

1 enter into settlement negotiations.

2 MR. TSCHANTZ: Up to the amount that was  
3 discussed in --

4 COMMISSIONER CASTOR: Do we need to talk about  
5 it any more?

6 MR. TSCHANTZ: Maybe we don't.

7 COMMISSIONER CASTOR: Because they'll have to  
8 come back to the Board for approval.

9 MR. TSCHANTZ: That's fine.

10 COMMISSIONER CASTOR: And if he negotiates  
11 something that's too high --

12 MR. TSCHANTZ: Actually I'm more comfortable --

13 COMMISSIONER FRANK: I don't think so. I don't  
14 think we should mention it.

15 COMMISSIONER STORMS: Well, wait, call them  
16 back in here. We can't have two people out, we're not  
17 done yet; are we? So who's having the discussion?

18 COMMISSIONER FRANK: We have to just go out and  
19 do something. We have to get the authorization for  
20 the --

21 MR. TSCHANTZ: Yeah, it wouldn't be my exact  
22 wording then to say -- he would scratch off the --  
23 not to exceed the amount discussed in the confidential  
24 attorney/client session, just authorize the Executive  
25 Director to discuss this negotiated settlement with

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the Putneys, periods. So if I could get --

COMMISSIONER STORMS: I'll do it and I'll be done.

(The meeting was concluded at 4:10 p.m.)

