

CASE NO. 14-005608-CI-15

Attachment – 4/5/16 Transcript

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PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS
CLOSED ATTORNEY CLIENT SESSION

THE RICHMAN GROUP OF FLORIDA, INC.

Plaintiff,

vs.

PINELLAS COUNTY, et al.,

Defendants.

PLACE: BCC Conference Room
315 Court Street
Clearwater, FL 33756

DATE: April 5, 2016

TIME: 1:06 p.m. - 2:01 p.m.

REPORTED BY: Tamara M. Pacheco, RPR
Notary Public, State of FL

SHADE MEETING/CLOSED ATTORNEY CLIENT SESSION

ALLBRITTON REPORTING
6101 36TH AVENUE NORTH
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APPEARANCES

BOARD OF COUNTY COMMISSIONERS:

- Vice-Chairman Charlie Justice
- Commissioner Janet Long
- Commissioner Kenneth T. Welch
- Commissioner Pat Gerard
- Commissioner Dave Eggers
- Commissioner Karen Seel

- Jim Bennett, Esquire, County Attorney
- Jewel White, Esquire, Chief Asst. County Attorney
- Don Crowell, Esquire, Managing Asst. County Attorney
- Nancy Meyer, Esquire, Senior Asst. County Attorney
- Edward Dion, Esquire, Nabors Giblin & Nickerson
- Mark S. Woodard, County Administrator

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P R O C E E D I N G S

COMMISSIONER JUSTICE: Mr. Bennett.

MR. BENNETT: Thank you, Mr. Chairman.

First things first. I would like everybody to go around the room and introduce themselves to the court reporter so she will be able to put names with faces. We can start with Ed Dion in the back.

MR. DION: Ed Dion with the law firm of Nabors, Giblin, and Nickerson. I'm special counsel for the County.

MS. MEYER: Nancy Meyer, Pinellas County Attorney's Office.

MR. CROWELL: Don Crowell from the Pinellas County Attorney's Office.

COMMISSIONER SEEL: Karen Seel, Pinellas County Commissioner.

COMMISSIONER LONG: Janet Long, Pinellas County Commissioner.

COMMISSIONER JUSTICE: Charlie Justice, Pinellas County Commissioner.

COMMISSIONER EGGERS: Dave Eggers, Pinellas County Commissioner.

COMMISSIONER GERARD: Pat Gerard, Pinellas County Commissioner.

1 COMMISSIONER WELCH: Ken Welch, Pinellas
2 County Commissioner.

3 ADMINISTRATOR WOODARD: Mark Woodard,
4 County Administrator.

5 MR. BENNETT: Jim Bennett, County
6 Attorney.

7 MS. WHITE: Jewel White, County Attorney's
8 Office.

9 MR. BENNETT: Well, thank you for agreeing
10 to postpone some of our later discussions to
11 get this out of the way and done. This is a
12 unique meeting forum that we do not use often.
13 It always serves to remind everybody.

14 As you can see, we have a certified court
15 reporter here who will be transcribing the
16 proceedings. No portion of the session shall
17 be off the record, so I would remind you try to
18 avoid talking over one another. It makes her
19 job easier. That record will be fully
20 transcribed and filed with Board records and
21 becomes public record at the conclusion of the
22 litigation.

23 Jewel is here to help me monitor
24 compliance with the statutory limitation on the
25 subject matter of discussions. I'll mention

1 that now and mention it several times later.
2 Our scope is confined to settlement
3 negotiations or strategy sessions related to
4 litigation expenditures. So if we start
5 straying from that, if I don't catch it, Jewel
6 is going to kick me, and we'll bring things
7 back in. For that reason, you have in front of
8 you an agenda that we're going to try to stick
9 to.

10 Don is here as a litigation manager to
11 direct some of the flow of information. Nancy
12 Meyer is here to provide you with the context
13 of the case. Ed Dion is here to advise you on
14 the settlement negotiations, strategy, and
15 litigation expenses. And we are all here to
16 answer your questions and engage in a
17 discussion, provided that discussion is related
18 to the scope of the Shade Meeting, which again
19 is settlement negotiations or strategy sessions
20 relating to litigation expenditures.

21 So Nancy, can you give us some context.

22 MS. MEYER: I sure can. Thank you. Good
23 afternoon.

24 COMMISSIONER WELCH: Afternoon.

25 MS. MEYER: This case originates from a

1 Safety Harbor piece of property at the corner
2 of McMullen Booth and 590. It's known as the
3 Firmenich Citrus Packing Plant for those of you
4 that are familiar with it.

5 In 2013, Safety Harbor brought a land use
6 map amendment to you. It's a piece of land
7 that's about 35 acres. Almost 16 acres of the
8 land now is zoned industrial light or
9 industrial limited, and that was the main crux
10 of what was being changed to allow for a
11 building of apartments.

12 So when Safety Harbor approved that at I
13 believe a three to two vote, it came to you
14 guys. The PPC had heard it, and it was passed
15 by the PPC for approval at an eight to five
16 vote I believe it was. So it came to you guys
17 in March of 2013, and it was denied. You guys
18 denied their request for a land use map
19 amendment.

20 At that time, you did cite your concern
21 for the loss of industrial lands as one of the
22 many reasons that you did not want to approve
23 it. Other issues were traffic and esthetics
24 and some other things, but the main discussion
25 was around the loss of that industrial land.

1 The Richman Group, which is the plaintiff
2 in this case, then took the denial to an
3 Administrative Law Judge Hearing, which they're
4 able to do under our Special Act. Myself and
5 David Sadowsky had a trial for three days in
6 front of an administrative law judge who came
7 down with some findings of fact and a
8 recommended order that then came back to you
9 guys in January of 2014.

10 He in his recommended order indicated that
11 he felt that the Richman property application
12 did meet all the criteria it needed to meet;
13 however, he acknowledged that it was your
14 legislative decision to ultimately balance the
15 factors that are important to this area in
16 making your ultimate decision. When it did
17 come back to you in January of 2014, you again
18 had discussions about your concern for the loss
19 of industrial lands, again, traffic concerns
20 and esthetics and some other issues, and you
21 once again denied their request to change the
22 land use map amendment.

23 After that, the Richman Group did not
24 appeal that decision. They are not now asking
25 for that land use map amendment. What they

1 have done is they have sued us in Circuit Court
2 under 1983, which allows them to bring an equal
3 protection and a due process violation claim.

4 What they're claiming essentially under
5 equal protection is that there are other land
6 use map amendments that were brought before you
7 that they claim are similar to theirs that you
8 approved, and you treated them differently
9 without a rational basis for doing it. The due
10 process violation essentially means you didn't
11 have a rational basis for denying their
12 amendment.

13 That's where we are from a litigation
14 standpoint. We have had mediation. At
15 mediation, Mr. Bennett and I met with each of
16 you briefly. They did request 18.6 million
17 dollars to settle this case. That's based on
18 their expert's opinion, Dr. Fishkind.
19 Obviously, we did not accept that offer. So we
20 have had mediation. It did not obviously get
21 us anywhere.

22 We recently had a Motion for Summary
23 Judgment in front of Judge Walter Schafer. Our
24 motion was denied, so we are currently
25 scheduled for a nonjury trial in front of

1 Walter Schafer April 20th through 22nd. So
2 that's where we are procedurally in our posture
3 in litigation.

4 MR. BENNETT: Any questions on that before
5 me move forward? Yes.

6 COMMISSIONER LONG: Nancy, I'm not sure
7 that I'll craft my question correctly, but
8 given what you've talked about, that there have
9 been precedent in terms of other pieces of
10 property that we had okayed, was that before or
11 after we did our very big comprehensive
12 replanning of the County?

13 MS. MEYER: The plaintiffs have alleged
14 various pieces of property. Some of them were
15 decided long before you decided Richman. Some
16 of them were decided -- I think one of them was
17 decided after you amended the criteria and
18 after Richman. Originally, they cited two that
19 came after Richman, but they seemed to have
20 dropped one off. One of them that's still -- I
21 think the strongest argument that they put
22 forward is the Nielsen property that came --
23 the Dunedin property that came right after your
24 decision on the Richman property. So I hope
25 that answers your question. Some were before,

1 and some were after.

2 COMMISSIONER LONG: It does. The Richman
3 property, I clearly remember that discussion,
4 and I also clearly remember that there was
5 quite a large number of citizens that came
6 forward to speak against this as well. Is that
7 correct?

8 MS. MEYER: That is correct.

9 COMMISSIONER LONG: Because I didn't hear
10 you mention that in your list of reasons.

11 MS. MEYER: There was. We did have people
12 I think that came out, some for and quite a few
13 came out against it.

14 COMMISSIONER LONG: Thank you.

15 COMMISSIONER GERARD: The Nielsen property
16 was a similar size to this one or bigger?

17 MS. MEYER: You might remember the
18 exact --

19 MR. DION: Twenty-four, I think.

20 MS. MEYER: I think it's smaller. It's
21 still a good size property, but it is smaller.
22 I think Mr. Dion will get into more of that in
23 a minute. The things they're claiming are
24 similar, we of course do not agree.

25 COMMISSIONER JUSTICE: Commissioner Welch.

1 COMMISSIONER WELCH: Are you going to get
2 into how they came up with 18.6?

3 MS. MEYER: Mr. Dion will, yes.

4 COMMISSIONER WELCH: Okay.

5 COMMISSIONER JUSTICE: So it doesn't
6 matter necessarily what the criteria the
7 Commission used to deny the proposal. They're
8 arguing that it was irrational and it wasn't
9 justified. I mean, is there a legally
10 justifiable reason for denial that the judge
11 would have thrown this out weeks ago?

12 MS. MEYER: You want to address that?

13 MR. DION: I can.

14 MS. MEYER: I'll let Mr. Dion address that
15 as part of what he was going to say.

16 MR. BENNETT: We'll push that back on the
17 agenda. We're almost to Ed now, and we will
18 answer that.

19 COMMISSIONER JUSTICE: Because you cited a
20 couple of issues, the loss of industrial land
21 use, esthetics, traffic and others, but it's
22 not like at that meeting, either of those two
23 meetings we took a vote and said the reason we
24 are doing this is X, Y, Z.

25 MS. MEYER: Correct.

1 COMMISSIONER JUSTICE: It was part of a
2 discussion, and then there was a vote.

3 MS. MEYER: Exactly. Our argument -- I'll
4 go ahead and take some of your thunder.

5 MR. DION: Please.

6 MS. MEYER: Part of our argument has been
7 and will continue to be that all of those
8 things you all discussed and referenced support
9 the general welfare of the constituents of
10 Pinellas County. That is a rational decision.
11 That's the basis of your decision. It doesn't
12 have to be that it was --

13 COMMISSIONER JUSTICE: Checking that box.

14 MS. MEYER: Right. It doesn't have to be
15 a specific thing. They are trying to argue the
16 criteria in our plan allows them to bring the
17 amendment forward. They did get all those
18 boxes checked, and so they should get their
19 amendment. We're arguing that's a legislative
20 decision. That would be a quasi-judicial
21 decision, which is not the arena that this is
22 in.

23 COMMISSIONER JUSTICE: All right. Thank
24 you.

25 MR. BENNETT: Okay. Don.

1 MR. CROWELL: Thank you. Good afternoon,
2 Commissioners.

3 COMMISSIONER WELCH: Good afternoon.

4 MR. CROWELL: I just wanted to give you
5 one more kind of framing of this as to why
6 we've asked you to come to a Shade Meeting to
7 hear what we're here to talk about. Again, as
8 Jim talked about, the statutory framework, the
9 settlement negotiations or strategy sessions
10 related to litigation expenditures, and
11 ultimately, what we're seeking here is
12 direction from the Board on the balancing of
13 the costs of this ongoing litigation in light
14 of the risks of those ongoing decisions that
15 are going to be at the trial court and
16 potentially at appellate levels in light of the
17 principles that we believe we are defending on
18 behalf of the County on your behalf in this
19 case.

20 Now, as to those costs, those actual
21 litigation costs are primarily from the point
22 of the County going forward relating to expert
23 costs from a financial expert we have. Her
24 costs are \$750 per hour for trial and
25 depositions, plus her expenses for travel and

1 those kinds of things. Under 1983, we are not
2 only going to be responsible for the costs of
3 our special counsel in this, but should they be
4 successful, the County would be potentially
5 exposed to the attorney's fees for the
6 plaintiffs as well. The potential damages
7 we've already touched on.

8 While we -- I'm going to steal his thunder
9 a little bit. While we seriously question the
10 underpinnings of not only the substance of
11 their case but also the way at which they
12 arrived at 18.6 million dollars, the number
13 they have put forth at this point is 18.6
14 million dollars. Now, all that is, again, in
15 the context of the principles that we're
16 seeking to defend on behalf of the County in
17 this case, which is the legislative prerogative
18 of the Board of County Commissioners within the
19 context of land use decisions.

20 In this particular case, the way they
21 framed it, under 1983, the review by the Court
22 is going to be on an arbitrary and capricious
23 basis, which is not wildly different from what
24 it would normally be in a legislative land use
25 decision, which is a fairly debatable

1 standpoint. If a reasonable person could come
2 to the conclusion that you did on whatever
3 non-discriminatory basis, the Court can't
4 supplant its determination on how to apply
5 those facts for yours. That's simply outside
6 of the realm of what they're allowed to do.

7 Now, you kind of touched on this,
8 Commissioner. This is not a quasi-judicial
9 process where it would be if you check all the
10 boxes, essentially the Board would be in a
11 position of, okay, they've checked all the
12 boxes, so we need to approve this. That is at
13 least in some ways where they're trying to push
14 this argument, and we think that's a dangerous
15 place from a general governmental legislative
16 prerogative.

17 Ultimately though, we need this Board to
18 determine with those costs and the potential
19 downside and risks of litigation in light of
20 some of the stuff Ed is going to tell you here,
21 are those principles the kinds of things that
22 are frankly worth the risks in that ongoing
23 costs and carrying that out forward? Spoiler
24 alert. I think we think it does, but that's
25 not ultimately for us decide. It's for you to

1 decide.

2 So with that, I'm going to ask Ed to give
3 his evaluation of this case, a little bit more
4 of the details about where we are, and then a
5 recommendation to you about where he thinks
6 that we ought to take this as the County. Ed.

7 MR. DION: Mr. Chairman, Commissioners.
8 By way of introduction, I'm Ed Dion from the
9 law firm of Nabors, Giblin and Nickerson.
10 We've been privileged to represent this County
11 on several occasions. I'm a former county
12 attorney of Broward County for five-and-a-half
13 years as a county attorney, so I know exactly
14 what these folks are going through. I've been
15 through several Shade Meetings with clients in
16 litigation of this nature, and I'm familiar how
17 this thing goes.

18 I know there has been reference to 1983,
19 and I just want you to know that's a federal
20 statute, you know, that allows a plaintiff in
21 this case to bring an action against you for
22 damages claiming, as Nancy said, that you
23 violated their substantive due process rights,
24 as well as their equal protection rights.

25 Now we're used to, commissioners, hearing

1 equal protection in discrimination types of
2 cases, that because, you know, you are of a
3 protected class that you can bring an equal
4 protection. Well, there's something that's
5 known as a class of one, and that's where they
6 show that you -- a class of one where they have
7 to show that you intentionally discriminated
8 against them in comparison to other similarly
9 situated applicants for the same type of use.

10 The six parcels that they've utilized as
11 their comparators in our opinion are not
12 comparable. They are all over this county.
13 They are not in Safety Harbor. They are not 34
14 acres. Some of them were used for townhouses.
15 Some of them were used for comprehensive
16 multiuse types of developments. We think the
17 law is pretty clear that it has to be prima
18 facie identical in all relevant respects.
19 Well, you don't know the case but Nancy and I
20 do, and I'm telling you that they are not.

21 But I don't want to get into that a whole
22 lot. What I want to get into is our analysis.
23 As Don or Nancy has previously said, they think
24 that their case is simple. They think that
25 because they've checked the boxes in the

1 Special Act and the Countywide Rules that
2 they're entitled to a judgment in their favor.
3 We don't believe that's the case.

4 Because they've elevated this to a
5 constitutional level, they have alleged that
6 you violated their constitutional rights. Not
7 that you violated the Special Act. Not that
8 you violated Countywide Rules. But you
9 violated their constitutional rights by
10 refusing to approve that application for a land
11 use plan.

12 Since they've elevated it to that level,
13 they have to prove that your decision back in
14 2014 in both cases was arbitrary or capricious.
15 That means that it had absolutely no rational
16 basis whatsoever. You guys flipped a coin and
17 decided you were going to reject it. Or, you
18 didn't like the way the guy's tie looked that
19 day, and you rejected their application. I'm
20 seriously telling you that I believe that's the
21 standard they have to reach in order to prevail
22 in this case.

23 But, the problem with that is you're
24 looking at 18.6 million dollars, plus as Don
25 explained to you, possibly their attorney's

1 fees and costs, as well as our attorney's fees
2 and what little costs we have remaining. We're
3 not putting on big dog and pony show at the
4 time of trial. We think our case is much
5 simpler than that, and we will attempt to
6 convince the Court in the simplest possible
7 terms of what he needs to be considering.

8 So how did they get to 18.6 million
9 dollars? They have an economic expert from
10 Orlando. His name is Henry Fishkind. You've
11 probably used Dr. Fishkind before. I've worked
12 with Dr. Fishkind before. He's very creative.

13 COMMISSIONER LONG: I'll say.

14 MR. DION: What I'll tell you in general
15 terms is what he has done is he's taken
16 proformas from other Richman products in the
17 area and extrapolated those numbers to come up
18 with what he believes they would have made on
19 this project if they had the ability to
20 construct it.

21 Okay. Our expert believes that there are
22 serious flaws in his analysis and in his
23 formula, and she will be testifying to that
24 fact. Her analysis of this and I think the
25 most reasonable evaluation of the amount of

1 actual loss is Richman's only loss in this case
2 was the loss of the use of the money it would
3 have put into this project for the amount of
4 time it didn't have another project to put it
5 into.

6 For example, if they have another project
7 in Dunedin let's say six months later and they
8 took that money they were going to use in
9 Safety Harbor and put it into Dunedin, then
10 they would have lost the use of that money for
11 six months. Okay? That's a more reasonable,
12 in my opinion, measure of the damages that
13 they've actually suffered.

14 Those others are way too speculative. We
15 don't know what would have happened -- we don't
16 even know what would have happened if they
17 would have gone back to Safety Harbor at that
18 time. It was a three to two vote at the
19 beginning. We understand that there was some
20 controversy surrounding that vote. Apparently,
21 folks lost their positions on the town
22 council --

23 COMMISSIONER LONG: They did.

24 MR. DION: -- after that happened. So we
25 don't know what would have happened. We don't

1 know if a hurricane might have come through and
2 blown that thing down halfway through the
3 project. There are so many variables involved
4 in that that we think that's speculative
5 damages at best.

6 So our expert believes that even if you
7 give them a nine percent rate of return on
8 their money, which is pretty high -- the banks
9 are giving, what, one-and-a-half or two right
10 now. But even at that, we're only looking
11 at -- and six months is a pretty long time
12 because Richman is a pretty big company.
13 They've got projects going all the time. They
14 could have easily taken this money the
15 following week and put it into a project maybe
16 in a different county. They're all over the
17 state of Florida as we know. But just on the
18 outside, we're looking at 500 to \$600,000, and
19 that's giving them lots of credibility that I
20 don't think they have.

21 Part of our valuation is this. I know
22 that they're going to have an opportunity to
23 read this at the end of the deal, but I'm going
24 to say it anyway. I believe that part of this
25 thing is motivated by the desire of the

1 opposition law firm to create a name for itself
2 in this type of litigation here in Pinellas
3 County. So they have nothing to lose.

4 Richman now is sitting with a piece of
5 paper from Dr. Henry Fishkind that says they're
6 entitled to 18.6 million dollars. It's a
7 lottery ticket. They've got nothing to lose.
8 If you offer them \$500,000 today, I don't think
9 that's going to get you anywhere. In my
10 professional opinion, unless you're willing to
11 cut them a check for something very, very close
12 to 18.6 million dollars, this case is not going
13 to settle.

14 All right. Now, having said that, based
15 upon the Judge's ruling on our Motion for
16 Summary Judgment that was held on March the
17 18th, the likelihood of an unfavorable result
18 in this case at trial is pretty high, which
19 means we're also looking -- I think both sides
20 are looking at an appeal. Irrespective of how
21 this comes out, we're probably going to go to
22 the Second District Court of Appeal on an
23 appeal.

24 So having said all that, I don't have a
25 number to give to you to say I think this case

1 would settle if you offered X amount of
2 dollars. I do not -- I am not recommending
3 that you offer them 18.6 million dollars. But
4 I also want you to know our estimate of our
5 fees and costs, you know, through an appeal is
6 probably in the 50 to \$100,000 range going
7 forward.

8 MR. BENNETT: Discussion.

9 COMMISSIONER JUSTICE: Commissioner Seel.

10 COMMISSIONER SEEL: I want to go back. So
11 Judge Walt Schafer ruled that it will be a
12 non-jury trial, so he will make the decision?

13 MR. DION: He will make the decision.

14 COMMISSIONER SEEL: Can you explain a
15 little further why you think it will be a
16 negative decision?

17 MR. DION: We had filed a Motion for
18 Summary Judgment in this case where we think
19 that we laid out in pretty decent fashion, with
20 the help of your great county attorney's
21 office, how this thing should have come down.
22 We believed that we showed him every possible
23 way that he could have ruled in our favor, and
24 he denied it without comment. That's
25 disturbing.

1 We had -- both sides had filed extensive
2 documentation that literally was a
3 foot-and-a-half or two foot high, and at the
4 end of two hours of argument, he just said your
5 motion is denied. That generally doesn't
6 happen in complex litigation cases like that.

7 There are two things that generally
8 happen. Usually, the Court will say you've
9 provided me lots of material, and I haven't had
10 an opportunity to go through all of it. Please
11 give me the opportunity to spend the weekend
12 reviewing what you've provided me, and I will
13 issue a ruling in the coming days. Or, they'll
14 say, you know, I want both sides to prepare an
15 order. I'll think about it, and we'll let you
16 know. The fact that he summarily denied it,
17 Commissioner Seel, is troublesome.

18 COMMISSIONER SEEL: Baycare was going to
19 use that property. Do we know the reasons why
20 they backed out of that?

21 MR. BENNETT: We don't know, and that's
22 probably outside of the scope of what we can
23 discuss today.

24 COMMISSIONER SEEL: Okay.

25 MR. DION: I agree.

1 COMMISSIONER JUSTICE: Commissioner Welch.

2 COMMISSIONER WELCH: So your estimate was
3 \$100,000 in attorney's fees if we go to appeal?

4 MR. DION: Through appeal.

5 COMMISSIONER WELCH: And does Nancy work
6 for -- who does she work for? Works for the
7 county?

8 COMMISSIONER SEEL: For us.

9 COMMISSIONER WELCH: When you said "she,"
10 Don, is at 750 an hour --

11 MR. CROWELL: That's for the expert
12 witness, the economist.

13 MR. BENNETT: The economist.

14 COMMISSIONER WELCH: How many hours?

15 MR. CROWELL: At trial, with -- I mean,
16 Ed, do you have an estimate at trial?

17 MR. DION: I figure a day for trial.

18 COMMISSIONER WELCH: So 7,000.

19 MR. DION: \$7,000.

20 COMMISSIONER WELCH: Is 100,000 and her
21 fee recoverable? Are your fees and the expert
22 fees recoverable?

23 MR. DION: Unfortunately -- that's a great
24 question. The answer is probably not.
25 Usually, although they award attorney's fees to

1 successful plaintiffs in Section 1983
2 litigation, they do not generally award it to
3 prevailing defendants because they're afraid it
4 will create a chilling effect on people
5 bringing these type of claims, legitimate
6 claims. So it would have to be completely
7 spurious in order for the Court to rule in our
8 favor, and I just don't see that in this
9 instance.

10 MR. CROWELL: That's as to the attorney's
11 fees, Commissioners. As to costs, there is a
12 prevailing party costs recovery. So perhaps as
13 to those expert costs, but it's also to a large
14 degree within the discretion of the Court.

15 COMMISSIONER JUSTICE: Commissioner Long.

16 COMMISSIONER LONG: Yes. Hello. Do you
17 have any opinion based on your experience and
18 knowledge of the courts on what the judge may
19 have been thinking when he just arbitrarily
20 said no since you seem to think it's so
21 unusual?

22 MR. DION: Circuit court judges are not
23 disposed to grant motions for summary judgment
24 because the appellate courts have been pretty
25 strict on them in reversing them when they do

1 so. It's easier for him, Commissioner, to just
2 let it go to the trial and then make his
3 decision after all of the evidence has been
4 heard, and then his chances of getting reversed
5 on appeal probably are diminished
6 significantly.

7 COMMISSIONER LONG: Good to know.

8 COMMISSIONER JUSTICE: Commissioner
9 Gerard.

10 COMMISSIONER GERARD: Totally different
11 question. What kind of precedent does it set
12 if they win the case and some judge somewhere
13 says we don't have a right to tell people
14 whether they can use their property as we wish
15 or not? It seems pretty broad.

16 MR. DION: I think you've hit on the main
17 issue in this deal. Your legislative policy
18 making prerogative is probably the most
19 important thing that you folks have. And, you
20 know, for those of you that have been here long
21 enough, you've seen how it's moved from
22 quasi-judicial to legislative, and it's very
23 important that you maintain that legislative
24 policy making prerogative in order to continue
25 to figure -- only you folks know what's in the

1 best interest of Pinellas County. You know,
2 appointed and elected judges really don't have
3 that. Administrative law judges in Tallahassee
4 don't have that knowledge as well.

5 You know, I've read the transcripts of all
6 of your meetings in this deal, and it was
7 obvious that you folks spent a lot of time
8 thinking about this particular application and
9 why you took the action that you took. I'm
10 just telling you, what I've seen points to the
11 fact that you had a very rational basis for the
12 action that you took. Our job is to convince
13 either the trial court hopefully or the
14 appellate court of that ultimately.

15 COMMISSIONER JUSTICE: Commissioner
16 Eggers. I'm sorry, Commissioner Gerard, do you
17 have follow-up?

18 COMMISSIONER GERARD: Just to follow up on
19 that, if we settled the case, would we be
20 admitting that we didn't have --

21 MR. DION: No. You'd be settling the
22 case. Of course, now that your Countywide
23 Rules have changed and you've incorporated
24 preservation of industrial property into the
25 Countywide Rules, the chances of this type of

1 thing coming up again are probably not as great
2 as maybe it would have been before. You know,
3 but that doesn't mean that the next time there
4 is a land use decision on something other than
5 industrial limited that this law firm or
6 Richman group or someone like them doesn't try
7 and do the same thing knowing that you got sued
8 and you lost or settled.

9 COMMISSIONER JUSTICE: Commissioner
10 Eggers.

11 COMMISSIONER EGGERS: Yeah. Thank you for
12 being here today and kind of coaching us
13 through this a little bit. Not being in the
14 Countywide Rules when this decision was made
15 and their argument towards that being maybe
16 capricious -- I don't know -- but in the
17 Dunedin decision being different to their
18 argument on arbitrary, why are we not exposed
19 on those two arguments with those two things in
20 play? What's protecting us?

21 MR. DION: Again, Commissioner, I think
22 because they've elevated it to that
23 constitutional level, there's a higher burden
24 on them to show. You know, the fact that you
25 check the box, that's the quasi-judicial part

1 of those types -- that's a zoning decision.
2 That's not a land use decision.

3 Our argument is and it's very clear from
4 the Special Act, it's very clear from the case
5 law that this is a legislative decision, and
6 once you reach that, then it's no rational
7 basis. They have to prove there was absolutely
8 no rational basis for the reaction that was
9 taken.

10 As far as Dunedin is concerned, I don't
11 believe that's a comparator at all. You know,
12 number one is it happened after the fact. My
13 argument to the judge at the summary judgment
14 was this. If it was after the fact, then you
15 didn't have that information in front of you
16 when you made the prior decision. So you could
17 not have compared that one to this one. You
18 see what I'm saying? That happened in the
19 future, so you couldn't have had that in your
20 mind when you were making the Richman decision.

21 COMMISSIONER EGGERS: Except it was two
22 different outcomes.

23 MR. DION: Well, that's true, but when you
24 compare, it's they have to be the same and it
25 has to be, you know, that you are

1 discriminating because you were familiar with
2 action that was taken previously, not action
3 that happened in the future.

4 COMMISSIONER GERARD: So they could say
5 that we had set a precedent of allowing it
6 before, but in this case, they can't say that
7 because it was after.

8 MR. DION: Right.

9 COMMISSIONER EGGERS: Okay. Just one
10 other question. As it relates to -- I'm trying
11 to formulate my question here. Legislative
12 discretion for the CPA versus the Commission,
13 is it different?

14 MR. DION: No.

15 COMMISSIONER EGGERS: It's acting as a
16 Commission or acting as the CPA?

17 MR. DION: No. Legislative is
18 legislative, whether you were acting as the
19 Countywide Planning Authority or the Board of
20 County Commissioners or the board of directors
21 of a special district that you guys might have
22 created that you are the Board for. That
23 legislative is legislative is legislative.

24 COMMISSIONER JUSTICE: And the residents
25 that testified who had rationale behind their

1 arguments, are they considered expert
2 witnesses?

3 MR. DION: They're not but it's not
4 improper for you to have considered that type
5 of testimony, especially when it was factually
6 based in making your decision, and we cited the
7 Court several cases that stand for that
8 proposition as well.

9 COMMISSIONER EGGERS: I don't know where
10 the County Commission was in its development,
11 but back in '04, there was an economic summit
12 here. There was a gentleman that said you guys
13 need to start buying up land and protect your
14 light industrial. I'm sure it was going into
15 the thinking process along the way. So it just
16 seems like there's a lot history in there, even
17 though it wasn't in the plan.

18 MR. DION: Right. And part of our
19 presentation at trial is going to be that, to
20 go back to those days where you had the
21 reports, the studies that were conducted. The
22 Teal Study I believe is one of them that was
23 done. Isn't that correct?

24 MS. MEYER: Yes.

25 COMMISSIONER SEEL: Pinellas By Design.

1 MR. DION: Right. Exactly. That Board of
2 County Commissioners, many of you who had been
3 on for quite some time, had seen the
4 development of that over time, and it was part
5 of their decision making. It's clear from the
6 transcript of those meetings that, Commissioner
7 and Commissioner, you know, that was clearly in
8 the forefront of your mind as you were making
9 the decision in that case.

10 COMMISSIONER EGGERS: One last question.
11 With regards to quasi-judicial and legislative,
12 it seems like we have total discretion under
13 the legislative to pick on all these different
14 things that we're talking about to make the
15 decision. I'm just trying to get in the
16 judge's mind about how he is going to rule on
17 this and why he could possibly go against us
18 throughout this process. It seems that there's
19 a lot of groundwork that's been laid.

20 Since this is legislative, their attorney
21 or any of them could have come on this floor
22 anytime, if I'm not mistaken, and asked what do
23 you guys think about this whole issue of light
24 industrial protection. I mean, it was out
25 there for public consumption. They could have

1 come to us at any time if they were doing their
2 homework properly and if they were doing their
3 work properly to ask that in addition to the
4 cases that were presented out there as a group.
5 Is that right?

6 MR. DION: Well, let me go back a step. I
7 don't want to say that you have complete and
8 total discretion. Okay? It has to be based
9 upon the public welfare. Okay? So as long as
10 your decision is infused with information that
11 you believe as a legislator is for the benefit
12 of the public that you serve, then that's a
13 rational basis.

14 MR. BENNETT: And Mr. Chairman, there is a
15 whole consistency argument in the sense that,
16 under our normal planning process, your
17 decisions need to be consistent with your
18 Comprehensive Plan. So that is not as clearly
19 laid out in the Special Act, but that certainly
20 serves as a limiter of your discretion.

21 COMMISSIONER JUSTICE: Commissioner Long.

22 COMMISSIONER LONG: Actually, Mr.
23 Chairman, I'd like to reserve my comments until
24 everybody finishes their questions.

25 COMMISSIONER JUSTICE: Commissioner Seel.

1 COMMISSIONER LONG: So come back to me,
2 please.

3 COMMISSIONER JUSTICE: Maybe.

4 COMMISSIONER SEEL: Under 1983, is there
5 any other case that has been like this that has
6 gone through the court process and set
7 precedent one way or the other?

8 MR. DION: There are lots of cases. Lots
9 of them are in our favor, but there
10 are obviously one or two that aren't. There is
11 one out of Tallahassee where they've had an
12 unwritten -- Thomasville Road, those of you
13 that know Tallahassee know Thomasville. They
14 had a Thomasville Road policy that was
15 unwritten. The local judge, the federal
16 district court judge found in favor of the
17 plaintiff in that case saying that they
18 couldn't rely on that. But there are other
19 egregious facts in there, Commissioner. It
20 would take me all day to explain to you.
21 That's one of the cases that they're hanging
22 their hat on.

23 The vast majority of the cases say this is
24 a legislative decision. If there's any
25 rational basis for it, then the courts need to

1 stay out of it. They're not supposed to be
2 legislators.

3 Part of our argument -- and I know you
4 folks have heard this before -- is separation
5 of powers. The court is not supposed to get
6 inside of your head and become a legislator and
7 determine whether you made a proper decision or
8 not. He's only supposed to determine whether
9 that was legal or not, not whether it was
10 legislative. So that's part of the argument
11 that we'll be presenting.

12 COMMISSIONER SEEL: I was curious whether
13 we wanted to do this in part just for the rest
14 of the counties in the state of Florida. I
15 mean -- no?

16 MR. DION: I don't think so.

17 COMMISSIONER EGGERS: I don't -- what was
18 your question?

19 MR. DION: I think it's an outlier. I
20 really do.

21 COMMISSIONER SEEL: My other question is,
22 is the judge allowed or are you allowed to
23 submit videos of the deliberations by the
24 County Commission?

25 MR. DION: The public meetings will in

1 fact be part of the evidence in this case.

2 COMMISSIONER SEEL: Okay. Thank you.

3 COMMISSIONER JUSTICE: Commissioner Welch.

4 COMMISSIONER WELCH: Commissioner Eggers
5 kind of hit on it. Although it wasn't in the
6 Countywide Rules, it was a clear policy of the
7 County and I think the PPC that we were going
8 to -- and the Economic Development Department
9 that we were going to preserve industrial
10 limited unless there was a compelling reason
11 not to. So, you know, it's fundamental. Why
12 have a CPA if we're supposed to go by this
13 cookie-cutter -- you don't need us if that's
14 the way -- it just seems amazing this is even
15 still alive to me.

16 MR. DION: I think, Commissioner,
17 honestly, that's what the legislature intended
18 when it created the Special Act. You know, if
19 in fact this was just check the boxes as I keep
20 saying, then you don't need the CPA. Once the
21 PPC makes -- remember, the PPC is just a
22 recommendation. The Special Act says it has to
23 be a super majority vote of the Board of County
24 Commissioners sitting as the CPA in order to
25 overcome that.

1 Well, there's a reason for that. They
2 wanted you to utilize your legislative
3 authority of your discretion in taking those
4 recommendations, talking among yourselves in a
5 public forum, and making that determination
6 based upon what's in the best interest of the
7 County.

8 MR. BENNETT: Mr. Chairman, I would
9 characterize the comments Commissioner Welch
10 and Commissioner Eggers has made as, because of
11 that history, that protection of industrial
12 land is part of your decision making DNA. It's
13 the way you think. It's how you think about
14 these things.

15 COMMISSIONER SEEL: I would also -- I'm
16 sure you've already thought of this already,
17 but I mean, I'm sure -- I'm remembering the old
18 Eckerd building. They wanted to have that use
19 changed to residential. Mike Meidel might be a
20 great witness because I know he counseled
21 different people looking for economic
22 development opportunities that that wasn't
23 going to work because we had the industrial
24 land.

25 MR. DION: He is a witness in this case,

1 as is Gordon Beardslee and Mike Crawford.

2 COMMISSIONER JUSTICE: Commissioner
3 Gerard, did you have something?

4 COMMISSIONER GERARD: Just to reinforce
5 that, there have to be any number of cases
6 where we talked about that, and the only time
7 we allowed -- even before I got here because I
8 was on the PPC. Pretty much the only time we
9 allowed a change was when it was a unique piece
10 of property that was too small to really do
11 anything or it was situated, you know,
12 surrounded by residential and less than five
13 acres -- probably less than two acres.

14 I mean, there might be a couple, but there
15 were very specific reasons why we were allowing
16 it at that point. The only reason it wasn't in
17 the Countywide Plan is because we were redoing
18 the entire Countywide Plan as part of the
19 merging, or it probably would have happened
20 years before. That was our practice. That was
21 our legislative intent obviously.

22 COMMISSIONER JUSTICE: I had a question
23 about raising it to a different level.
24 Intentionally discriminating, I think I heard
25 you say that, correct? Our decision

1 intentionally discriminated against their
2 company. Right, their company?

3 MR. DION: That's what the law says,
4 Commissioner.

5 COMMISSIONER JUSTICE: Which there's
6 obviously no way they can prove that. So if
7 the judge agreed to that part, said okay, we
8 can't prove the County Commission intentionally
9 discriminated against you, does everything else
10 fall apart after that?

11 MR. DION: It's supposed to. Yes, sir.

12 COMMISSIONER JUSTICE: What do they call
13 that when the --

14 MR. DION: When we win.

15 COMMISSIONER JUSTICE: Well, there's some
16 piece of the puzzle where it all comes tumbling
17 down. I thought there was some legal --

18 MR. BENNETT: The house of cards scenario.

19 MR. DION: The key element in both of
20 those claims is rational basis. They have to
21 prove that you were completely arbitrary and
22 completely capricious, and it's their burden of
23 proof. It is not the County's burden to prove
24 otherwise, although we will. So if the Court
25 says, well, the underlying policy of preserving

1 industrial lands was a rational basis for some
2 kind of due process, it's also a rational basis
3 on an equal protection claim as well and they
4 both go away.

5 COMMISSIONER JUSTICE: Could they -- this
6 has been a case I've seen in the legislature.
7 Could it get to a point of the commissioners
8 testifying?

9 MR. DION: No.

10 COMMISSIONER JUSTICE: Commissioner
11 Gerard.

12 COMMISSIONER GERARD: Never mind. It flew
13 out of my head. Well, I just wanted to say
14 that I think that it's worth defending myself,
15 particularly because we're dealing with a local
16 firm that we see on a pretty regular basis, and
17 like you said, once we open that door, that
18 door is open. It isn't just some random law
19 firm that's decided to bring this lawsuit.
20 That might not be relevant, but --

21 MR. DION: May I correct something? You
22 all will be testifying but through either video
23 or the transcripts.

24 COMMISSIONER GERARD: Things we've already
25 said.

1 MR. DION: None of you are going to show
2 up at that trial.

3 COMMISSIONER JUSTICE: Commissioner
4 Eggers.

5 COMMISSIONER EGGERS: It is arbitrary --
6 they have to prove arbitrary and capricious or
7 either? I mean, is that -- what is that?

8 MR. BENNETT: It's either or.

9 MR. DION: It's either or. It's
10 basically, like I said before, you flipped a
11 coin. You spun the wheel. You know, yes
12 today, no next week.

13 COMMISSIONER EGGERS: But I mean, that's
14 being -- I was thinking arbitrary. I still go
15 back to the Dunedin case. Why was that so
16 different? I mean, we argued this when I was
17 with the city of Dunedin that it was different
18 because it had been on the market for ten years
19 with a lot residential around it. Is that
20 arbitrary -- does that take away that arbitrary
21 nature?

22 MR. DION: It absolutely does.

23 COMMISSIONER EGGERS: That was our
24 thinking at the time as well.

25 MR. DION: Unquestionable.

1 COMMISSIONER JUSTICE: Commissioner Long.

2 COMMISSIONER LONG: Yes. I just have a
3 couple of comments, and I'd like to be on the
4 record as agreeing with Commissioner Gerard.
5 Because I think, you know, our staff and
6 everyone involved spent an inordinate amount of
7 time redoing our Comprehensive Plan for this
8 county because we all recognized that it's
9 totally built out, and we have a lot of
10 redevelopment to do to make it a walkable,
11 sustainable community for our citizens.

12 We're a serious group of commissioners
13 here. We have fun, but at the end of the day,
14 we are on a mission to get things done for this
15 county. And I think it's important that we
16 send a message that we are serious about our
17 Comprehensive Plan; that we're serious about
18 the way we want this county to look, five, ten,
19 fifteen years from now; and that we have to set
20 a precedent that we are serious. Otherwise, we
21 invite this type of thing every single time we
22 make a decision, and I think it flies in the
23 face of what our obligations are as leaders in
24 this County.

25 COMMISSIONER JUSTICE: Thank you.

1 Commissioner Welch.

2 COMMISSIONER WELCH: Well, it flew out of
3 my head now.

4 COMMISSIONER LONG: You have to write it
5 down.

6 COMMISSIONER JUSTICE: Commissioner
7 Eggers.

8 COMMISSIONER EGGERS: The comment about a
9 Comp Plan, which if I remember correctly, in
10 the city, we were going through it in '05 to
11 update the Comp Plan. We do it every ten
12 years. So was the Comp Plan that was in place
13 at the time that these decisions were made, did
14 it incorporate the light industrial piece or
15 not?

16 COMMISSIONER SEEL: You mean the Dunedin
17 Comp Plan or Countywide Plan?

18 COMMISSIONER EGGERS: No, no, no, the
19 county. I was assuming it was done at the same
20 time.

21 MS. MEYER: The plan that was in effect
22 when this application came through ultimately
23 was changed. At the time this application was
24 making its way through the system, Mike
25 Crawford and the others were working on the

1 changes to the plan. So they kind of
2 happened -- it kind of happened at the same
3 time. Actually, I think on January 14th when
4 this was denied the second time, the very next
5 hearing was Mike Crawford presenting changes to
6 the plan which incorporated more direct
7 statements about preservation of industrial.

8 It's been our argument since the original
9 denial on the first hearing in front of the ALJ
10 that is there is language within the plan that
11 talks about reserving lands for industrial
12 purposes, but now it's very clear. It's
13 clarified. It's very clear what the intent
14 was.

15 COMMISSIONER EGGERS: The final plan
16 wasn't approved, but there is a lot of parallel
17 conversation going on that made it very clear.

18 MS. MEYER: Yes, sir.

19 COMMISSIONER EGGERS: I know that we were
20 concerned about that too in the city on this
21 very issue. There was clearly a lot of thought
22 at the county level about the preservation of
23 industrial land way before that decision was
24 made, and then when they came out and made that
25 decision in the County Commission, that was a

1 big concern. But it wasn't in place at the
2 time, which is why the doors are a little bit
3 open?

4 MS. MEYER: It wasn't as clear as it is
5 now then, but there was enough stuff in there
6 --

7 COMMISSIONER EGGERS: There was enough
8 there.

9 MS. MEYER: That has been our argument.
10 And as Commissioner Welch mentioned, there's
11 Teals. There's Pinellas By Design. There is a
12 history that we are presenting to the Court to
13 show this Board's concern about this issue.
14 It's not something you came up with on that
15 day.

16 COMMISSIONER EGGERS: It's longstanding.

17 MS. MEYER: Yes.

18 COMMISSIONER EGGERS: It's not just like
19 -- gotcha.

20 MS. MEYER: Exactly.

21 COMMISSIONER JUSTICE: Commissioner Welch.

22 COMMISSIONER WELCH: The opposing counsel,
23 who is opposing counsel?

24 MR. DION: Scot McLaren, Henderson,
25 Ward --

1 MS. MEYER: Hill, Ward, Henderson.

2 MR. DION: Hill, Ward, Henderson. Sorry.

3 COMMISSIONER WELCH: Okay. Thank you.

4 COMMISSIONER JUSTICE: Commissioner Seel.

5 COMMISSIONER SEEL: So when we put that
6 policy into place, we did also put some
7 exceptions for industrial lands. Nielsen was
8 approved after that was in place.

9 MR. DION: That's right.

10 COMMISSIONER SEEL: I thought it was.

11 MR. DION: From a timing standpoint,
12 you're correct.

13 COMMISSIONER SEEL: By the way, if you
14 need any of the industrial plan stuff, I
15 probably have it in my office.

16 COMMISSIONER GERARD: I was going to say,
17 she has every piece of paper.

18 COMMISSIONER EGGERS: In her car did you
19 say?

20 COMMISSIONER WELCH: Probably in her car.

21 COMMISSIONER JUSTICE: Any other
22 questions? Counselor.

23 MR. BENNETT: Thank you for your time. I
24 appreciate you guys really stayed between the
25 rails on this and focused. I think we have

1 direction. There's no need to vote on anything
2 when we go out there.

3 Now, best practice would be for you to
4 turn in your notes and agenda to me and --

5 COMMISSIONER SEEL: If we have another
6 meeting, you can bring it back?

7 MR. BENNETT: Absolutely.

8 COMMISSIONER WELCH: So the direction is
9 we're not settling.

10 MR. BENNETT: We're going to try this
11 case. If anything comes out of left field
12 between now and date of trial, we'll let you
13 know.

14 COMMISSIONER EGGERS: I kind of had the
15 attitude that I was going in a different
16 direction, and I wanted to hear the discussion.
17 I think I'm comfortable as well.

18 COMMISSIONER SEEL: Part of me would like
19 to just at least make the \$500,000
20 settlement --

21 COMMISSIONER EGGERS: Offer.

22 COMMISSIONER SEEL: -- offer.

23 COMMISSIONER WELCH: I think it's such an
24 important principle.

25 COMMISSIONER LONG: I do too.

1 COMMISSIONER WELCH: I think it affects
2 every county.

3 COMMISSIONER SEEL: What's that?

4 COMMISSIONER WELCH: I think it affects
5 every county.

6 MR. CROWELL: And if I could,
7 commissioners, what Ed was describing to you
8 based on our economist is what we see as the
9 most rational measure of damages. Assuming
10 they can prove everything underlying and get
11 every damage they think they're entitled to --
12 which by the way, the only thing they've put
13 forward is financial stuff related to their
14 parent company who's not even a party to this
15 case. So that 500 to \$600,000 is their best
16 day if you understand and believe our theory of
17 the case.

18 COMMISSIONER SEEL: So who's the suer?

19 MR. CROWELL: It's Richman Group of
20 Florida, Inc. The financial stuff they've put
21 forward that Dr. Fishkind has reviewed, if I'm
22 not mistaken, relates to Richman Group of
23 Delaware, who's the parent company. It's a
24 different legal entity altogether.

25 COMMISSIONER JUSTICE: Commissioner Welch.

1 COMMISSIONER WELCH: What kind of timing
2 are you looking at to get through trial?

3 MR. DION: We're going to trial on
4 April 20th, two weeks.

5 COMMISSIONER JUSTICE: Yes, sir.

6 MR. BENNETT: I would like to correct a
7 concern that Commissioner Welch said about
8 whether this affects other counties. I think
9 as Ed indicated, this is a bit of an outlier
10 because it is operating under the Special Act
11 as opposed to the Chapter 163 process. The
12 principles overlap, but we're dealing with the
13 Board's legislative prerogative under the
14 Special Act, which quite frankly specifically
15 is laid out in the Special Act that these are
16 legislative decisions unlike the statutory
17 provision which is a creature of case law. I
18 don't think that a decision on this case is
19 going to drive the state of Florida in a
20 particular direction right now.

21 COMMISSIONER WELCH: Specifically a
22 Special Act.

23 MR. BENNETT: Yes.

24 COMMISSIONER JUSTICE: Commissioner
25 Eggers.

1 COMMISSIONER EGGERS: Going back to
2 Commissioner Seel's comment about offering
3 something, if there's an amount that would make
4 a difference, but you guys don't -- your
5 comment earlier was you don't even think
6 something close to 18 would make a difference.
7 So to even make the statement or offer that up
8 at 500 or a million or 1.5 million is really
9 kind of showing some maybe cards to the other
10 side that -- I don't mean -- I'm just trying to
11 understand.

12 MR. DION: Right.

13 COMMISSIONER EGGERS: The second thing was
14 that appeal process, you made the comment that
15 regardless, you think the loser -- you think it
16 could possibly be us in the first level that
17 we're going to appeal. I think that's what you
18 were eluding to.

19 MR. DION: Yes.

20 COMMISSIONER EGGERS: What at that next
21 level happens that opens the door for more
22 rational thought if the first level doesn't
23 prevail?

24 MR. DION: Hopefully we find judges in
25 Lakeland who can read.

1 MR. BENNETT: And are willing to read.

2 MR. DION: And are willing to read.

3 COMMISSIONER EGGERS: Willing to read.

4 MR. DION: I wasn't trying to be funny
5 with that comment. I'm absolutely serious.

6 COMMISSIONER EGGERS: Are they more
7 exposed --

8 MR. DION: There will be a three judge
9 panel at that stage. Generally, that's all
10 they do is they review briefs and hear
11 arguments of this nature. They would spend the
12 amount of time -- hopefully spend the amount of
13 time necessary to understand all the principles
14 that we've tried to give to you in the last 55
15 minutes and hopefully see the case law is
16 overwhelmingly on our side.

17 COMMISSIONER EGGERS: And judges don't
18 typically like to be overruled or overturned.

19 MR. DION: They do not.

20 COMMISSIONER EGGERS: So you hope that
21 maybe that thought process is more in play this
22 time.

23 MR. DION: I'm hoping what I said earlier
24 too. I think maybe Commissioner Seel's
25 question is that maybe he just denied the

1 Motion for Summary Judgment for fear of being
2 reversed on summary judgment. Allowing it to
3 go to trial, maybe he'll hear what we need him
4 to hear at that point in time, and we'll get a
5 favorable ruling.

6 COMMISSIONER EGGERS: Thank you.

7 COMMISSIONER JUSTICE: Anything else?

8 MR. BENNETT: That's it.

9 COMMISSIONER JUSTICE: All right.

10 MR. BENNETT: We'll reconvene out there,
11 at which point you'll make your closing
12 announcement, and we'll reopen for our
13 discussion of the second item on the agenda.

14 COMMISSIONER JUSTICE: 2:15.

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(Proceedings conclude at 2:01 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, Tamara Muche Pacheco, certify that I was authorized to and did stenographically report the Shade Meeting held before the Pinellas County Board of County Commissioners and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.



Tamara Muche Pacheco, RPR