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Subject: Fwd: Summary of latest meetings regarding proposed changes to Pine Island Plan

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To: Mailing List for PI Plan Revision Effort

Summary of latest meetings regarding proposed changes to Pine Island Plan

The Greater Pine Island Civic Association (GPICA) held a town hall meeting on 9 March to deal with this issue. 565 people were counted (many of whom had to listen from the parking lot and adjacent areas). That is clearly a new record for meetings on Pine Island.

The reason for the meeting was that Lee County Commissioners had announced an intention to vote on 17 March whether to hire a Tampa law firm to rewrite the Pine Island Plan. The reason they gave for doing so was the difficulty of defending the Plan against Bert Harris claims.

President Roger Wood convened the meeting and registered his strong disapproval that the GPICA had not been consulted by the county prior to this action. He then asked me to review the 30 year history of the Plan.

I recounted the following:

- The authors of the original Pine Island Plan were Doctors Gene and Ellie Boyd in the late 1980's. They were also the founders of the Smart Growth Program in Lee County. In 1988, they created the 810/910 rules, by which future development would be restricted.
- The 810 rule restricted rezonings to commercial when the traffic count through Matlacha reached 810 peak hour annual average two-way trips, if the rezoning would result in more traffic through Matlacha.
- The 910 rule restricted (essentially prohibited) new residential development orders when the traffic count through Matlacha reached 910 peak hour annual average two-way trips.
- Drs' Boyd were the target of heavy harassment for people opposed to these rules and eventually left the island following death threats. I inherited their files.
- Throughout the 1990's, Pine Island bid its time, awaiting the traffic count milestones.
- In 2000, the 810 milestone was met, and the county began implementing it—they have done so ever since.
- In 2001/2002, the Lee County Attorney's Office, anticipating the soon to be met 910 milestone, said they could not defend a moratorium on new development orders.
- Pine Island started another extensive series of weekly and monthly meetings to revise the 910 rule to make it more acceptable to wannabe developers and Lee County. Harassment and threats to members of the Planning Committee resumed.
- Pine Island proposed and Lee County eventually accepted (in 2003) a change to the 910 rule replacing the moratorium with a sliding scale by which developers could get 1 DU/17 acres to 1 DU/2.7 acres depending how much property was preserved as native habitat or farmland.
- In 2002, The Pine Island Agricultural and Landowners Association (PIALA) brought a Florida Chapter 120 action against the Plan changes.

- In 2003, the 910 milestone was met. However, Assistant County Attorney Tim Jones prevented the traffic count from being published or released until 14 March 2006, when the BOCC publicly recognized that the 910 traffic count had been exceeded (following a hearing that was attended by some 300 Pine Islanders and went from 1 p.m. to 11 p.m.).
- Facing certain defeat, the PIALA withdrew their Chapter 120 action, and the Pine Island Plan became effective on Christmas Eve, 2004.
- The PIALA then brought a Twentieth Judicial Circuit Court action claiming the Plan is unconstitutional. Judge Steinbeck finally dismissed the action several years later.
- Both the 810 and 910 rules have been fully implemented from 2006 to date (March 2015). Developers have submitted applications found in compliance with 910 provisions and some have found the clustering provisions to be both practical and economical.
- King Ranch has been buying properties on Pine Island for the last few years and is working hard to get rid of the Pine Island Pan by both political and legal means.

President Roger Wood and Vice-President Kathy Malone urged Pine Islanders to attend the 17 March BOCC meeting. They correctly described BOCC protocols and procedures, and emphasized the critical importance of dignified conduct at the meeting. President Wood then asked me to summarize the Bert Harris Act, which I did as follows:

The Bert J. Harris Jr Private Property Rights Protection Act became effective on May 11, 1995, is not retroactive, and thus does not apply to the 810/910 rules enacted in 1988. The Act provides protection to landowners over and above the provisions of the United States Constitution and is unique to Florida. My personal view of the Act is that it does a reasonable job of legislating fairness to landowners. It provides payment for damages if a government agency “inordinately burdens” an “existing use of real property or a vested right to a specific use of a real property.” The Act does not prevent good land planning or force communities such as Pine Island to accept more development than the island can absorb. In my opinion, there is no need for local governments to panic when presented with Bert Harris claims.

I also told the audience that I expected that the commissioners would approve hiring the attorney to rewrite the Pine Island Plan by at least a 3 to 2 (maybe higher) vote on 17 March, and we would probably hear nothing more of all this for at least a few months. Several people complained that these things always seem to happen during the summer when most Islanders are up north.

Noel Andress advised that Pine Islanders will get to see and comment on the proposed changes to the Plan at several public meetings held by the LDC Committee, LPA, and BOCC before the changes can become final. He also said he believes some changes to the Plan are necessary. After extensive questions and numerous comments, the President adjourned the meeting.

On Tuesday morning (10 March), Noel Andress, Bill Spikowski, and I met with Commissioner Manning, County Attorney Richard Wesch, Supervising County Attorney Michael Jacob, and County contract attorney Jeff Hinds and contract planner Alexis Crespo. The county leaders complained that someone on Pine Island “is getting people all stirred up and handing out bad information.” I assured them that person is me, but I don’t consider the information to be bad (I’m the person who found out about the county’s actions and informed Pine Islanders—that’s my job as pro bono consultant to the GPICA).

I told them that the announcement (with no prior notice to us) that they intended to vote to rewrite the Pine Island Plan is the cause of alarm to Pine Islanders. I told them that they have to realize that Pine Island has 30 years of sweat and toil and considerable amounts of non-government money invested in the existing plan (we

even sold our Civic Building to the Elks to get money to write this Plan.) The announcement that the 910 rule would be replaced with “something like one house per acre” was disturbing in the extreme.

All of them assured me that they would proffer provisions that would adequately replace the 910 rule. They didn't offer to share what those saving provisions might be. I claimed that there is nothing they could possibly write that would protect Pine Island from over-development and environmental and quality of life destruction if they allow one house per acre.

Commissioner Manning assured me that the commissioners have not approved anything like one house per acre. He asked that we wait and see what the law firm comes up with.

County Attorney Wesch said his office has been accused of corruption—to which he took great umbrage (as well he should). I assured him that did not originate with me; and that in fact at the meeting last night, I responded to a question along those lines that neither the commissioners nor the attorneys have done anything illegal. I also advised in response to similar questions that a lawsuit is not the answer to our problems.

I told the county folks that emails and attendance at BOCC meetings are (in my opinion) the appropriate way for Pine Islanders to address these problems, and the County should expect them to continue.

All present at the Tuesday meeting agreed that we should all work together.

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