

Meeting Date
09/16/2014



AGENDA	
Section	New Business
Item No.	V A 5

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Board Direction Re: Department of the Army Corps of Engineers Alleged Violations of the Rivers and Harbors Act and the Clean Water Act Regarding a Dock Located Adjacent to Brevard County Right-of-Way Mockingbird Lane – District 3
DEPT/OFFICE:	Public Works Department

Requested Action:

It is requested that the Board of County Commissioners provide staff direction regarding options for addressing Department of the Army Corps of Engineers alleged violations of the Rivers and Harbors Act and the Clean Water Act regarding a dock located adjacent to Brevard County Right-of-Way Mockingbird Lane

Summary Explanation & Background:

By way of background, on March 19, 2013 the Board of County Commissioners directed staff to take no action regarding the existing dock and other improvements located at the south end of Mockingbird Lane (see Exhibit A). On July 8, 2014 Brevard County received a notice from the Army Corps of Engineers (ACOE) alleging violations of the Rivers and Harbors Act and the Clean Water Act as a result of a dock and boat ramp at the end of Mockingbird Lane in Micco, Florida. (See Exhibit B). The County was given 15 days to respond. Staff responded requesting a 4 month extension. A 60 day extension was granted until September 24, 2014.

The subject dock and ramp are built in the San Sebastian River adjacent to right-of-way held by Brevard County, but the structures were not built by Brevard County. Staff does not know who built the structures or exactly when they were built. However, the structures have been in place for many years. Many residents of the area use the dock and the ramp.

Following conversations with an ACOE representative, it is clear there are two very different components to the allegations with two different remedies.

1. Under the Harbor and Rivers Act, a permit is required for the dock, and under that act, violations run with the land and the landowner is responsible. The ACOE views Brevard County as the owner under the Rivers and Harbors Act since it owns the right-of-way adjacent to the dock. The violations are classified as “criminal” per the ACOE.
2. Clean Water Act violations are not tied to the land. Those regulations run against the violator, who in this case is an unknown party. Nonetheless, ACOE asserts that there exists a potential harm to manatees from motorized vessels, and thus, the ACOE requests that the ramp be removed.

There are several options proposed for the BCC.

(Agenda Report continued on Page 2)

Fiscal Impact: 2013/2014 See potential costs associated with each Option.
 2014/2015 See potential costs associated with each Option.

Clerk to the Board Instructions: Forward Board Direction to Department

Exhibits Attached: Exhibit A – March 6, 2013 Board Action, Exhibit B - ACOE July 1, 2014 Letter

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager, Mel Scott, AICP		Department Director / Extension			
Stockton Whitten		Assistant County Manager, Venetta Valdengo		John P. Denninghoff / 57202			

Option 1: Vacate the right of way (ROW).

ACOE Response: The ACOE maintains it is not seeking to remove public access to waterways. Vacating that portion of the ROW would shift ownership and violation to the adjacent properties. The ACOE would remain concerned about the manatee impacts. This option cannot be completed prior to the September 24, 2014 deadline for responding to the ACOE. An extension of time would be needed to complete this option. The ACOE indicated if initial corrective actions were taken to block access to the dock and ramp (Option 3), an extension of time is likely to be granted.

Cost: \$600 to advertise vacating hearing.

Option 2: Remove the dock and the ramp.

ACOE Response: The violations are cured. The ACOE representative does not believe mitigation would be required.

Cost: The cost of removal is minimal per the Public Works Director, provided no mitigation is required.

Option 3: Remove only the connection from the shore to the dock and block the ramp so that motorized vessels cannot be launched.

ACOE Response: This option may be an initial corrective measure that would allow the ACOE a basis for granting an additional extension of time to allow the County to address other permanent options.

Cost: The cost of removal is minimal per the Public Works Director, provided no mitigation is required.

Option 4: Block the ramp, don't disconnect the dock, and get after-the-fact permit for dock.

ACOE Response: This option may be an initial corrective measure that would allow the ACOE a basis for granting an additional extension of time to allow the County to obtain the after-the-fact permit for the dock.

Cost: The cost of blocking the ramp would be minimal, provided no mitigation is required. The Natural Resources Management Department is currently estimating permitting costs.

Option 5: Obtain an after-the-fact permit for the dock and seek a ramp permit.

ACOE Response: The dock issue would be cured. The ramp cannot be permitted as it currently exists due to the ability of motorized vessels to be launched and potential impact to the manatees. The ACOE believes the ramp could be permitted if it is converted to provide access for non-motorized vessels only. This modified approach cures the violation.

Cost: Unknown. The permitting would be undertaken by Brevard County staff and is expected to be relatively inexpensive. The Natural Resources Management Department is currently estimating permitting costs.



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

September 17, 2014

M E M O R A N D U M

TO: John Denninghoff, Public Works Director

RE: Item V.A.5., Department of the Army Corps of Engineers Alleged Violations of the Rivers and Harbors Act and the Clean Water Act Regarding a Dock Located Adjacent to Brevard County Right-of-Way, Mockingbird Lane

The Board of County Commissioners, in regular session on September 16, 2014, approved Option 4, to block the ramp, do not disconnect the dock, and get after-the-fact permit for the dock, regarding the dock located adjacent to Brevard County Right-of-Way, Mockingbird Lane.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Portion of Item U.A.5

Infantini: It seems that everyone is in agreement on both sides that if we should choose Option 4, to block the ramp . . . I have been in conversations with the head of the, the individual that's handing this from the Army Corp of Engineers. He indicated verbally that it didn't appear like they also said, that it would be a problem if we would just block off the boat ramp. The only concern is that the boat launch . . . and if you see it, it doesn't look like a boat launch. All it is grass and some stones at the bottom. I don't know how you call it a boat launch but apparently it is. Okay, so if we would block off the boat launch with some pilings that he believes that we would be able to obtain an after the fact permit for the dock, and that way we would be able to maintain ownership of the property just as we did on Skylark; and I don't know if you all recall the Skylark incident in Satellite Beach. The gentleman originally was calling me on it every couple of days telling about all of the crimes that were being committed on that waterfront property and that it needed to be vacated to the benefit of the two adjacent property owners, but the police reports didn't support that; and when he didn't get his way, I don't know if you all saw the before and after pictures, all he was looking for was to build an addition to his home and so he occupied the entire piece of his lot. I've got pictures of that. So, I make a motion that we accept Option 4.

Anderson: Second.

Bolin Lewis: I have a motion by Commissioner Infantini, seconded by Commissioner

Anderson. Discussion? Commissioner Nelson.

Nelson: I was never in favor of vacating it, and I would have preferred if you'd have given the community all five options instead of just three, but I don't think this Board was ever going to vacate. We actually have a policy against vacating; but the staff correctly indicated that could be an option that the Board could do that. My concern is that the dock is in an aquatic preserve and not built to a standard that we're aware of. It is what it is. We have street ends that go into the river throughout the County. Are we going to be building docks on every one of those, and are we going to be maintaining them? You know, I think that's a precedent that I'm concerned with. You know, who's going to maintain the dock from here on out. Is it John's responsibility, Commissioner? Is that your plan or

Infantini: Is it, are you asking me?

Nelson: I'm asking because you didn't clarify.

Infantini: Okay, sometimes if I respond sometimes I'm accused of interrupting, and I didn't want to do that.

Nelson: Well, usually you don't wait till I ask the question.

Infantini: Do you want me to answer your question?

Nelson: Probably not, but go ahead.

Infantini: I'll let you finish. Go ahead.

Nelson: No, what I wanted to do was clarify what you were asking, because you didn't say whose dock it is and we are currently, we have a letter in position that says that the dock is illegal. So what is your plan for the dock?

Infantini: Chairman is it my turn to speak?

Bolin Lewis: Yes.

Infantini: Okay, I would recommend that the County maintain the dock, we apply for an after the fact permit with the Army Corp of Engineers, and that we block off the boat ramp as such so that, with pilings, so that the boat ramp is no longer accessible; and while the neighbors have done an excellent job for the past 50 years of maintaining the dock to avoid any hard feelings going forward, I would suggest that we maintain it. It's certainly less expensive than maintaining the sea wall on Skylark; but just the same, then we know it's maintained to our standards; and if the neighbors want to continue to mow the lawn, that would be greatly appreciated. If they don't well, you know whatever.

Bolin Lewis: Commissioner Nelson, would you like to continue?

Nelson: Yeah, thank you for your clarification. I don't support continuing the dock, continue the access, blocking the boat ramp, but not continuing the dock because I think that is an attractive nuisance that we're going to be subject to. I don't want to see our Public Works folks get involved in taking care of docks. So I won't be supporting that option. I would prefer to see continue public access with the removal of the dock.

Bolin Lewis: Commissioner Fisher, followed by Commissioner Anderson.

Fisher: If this is going to be blocked off from the boat thing, would you block it off at the street or down by the ramp itself?

Denninghoff: Commissioners, I think the, for clarification purposes, for the most part what the Corp was looking for as far as blocking the ramp is to make it to where a vehicle can't back down and launch a boat from a trailer. There are a number of non-motorized vessel launches in the County that show that you can arrange a ramp to where you can launch a canoe or kayak successfully by hand and so as long as you can eliminate that motorized vehicle or large, not motorized vehicle, motorized vessel, large vessel, from being able to launch then I think that satisfies what the Corp has indicated that they are looking for. So we would be looking for something like bollards or something of that sort that would make it to where it would be very difficult. I've seen it done with like railroad cross ties that are placed across the ramp, that there's such a drop off that you can't pull a boat trailer down that successfully. So there's a variety of ways to accomplish that, sort of blocking it.

Fisher: So would you do it down by the water?

Denninghoff: Yes, it would be at the river, down by the river as opposed to up at the end where

the pavement is.

Fisher: I guess one of the concerns I have is I think there's still some vehicle traffic that's happening there. You know, if you block it off by the road you eliminate the vehicle traffic but you still allow people to have access to the water. I'm just trying to figure out what you're thinking. I think part of the challenge was additional vehicle traffic that was being generated down that way.

Denninghoff: We could do both, but the Corps issue is specifically with the ramp access of the larger vessels and vehicles to the water via the ramp.

Fisher: I think I've got two sides of the room here. On this side of the room, I'm just curious, did you have a problem with the vehicle traffic being stopped driving to the thing? Just say yes or no, or one of you come up.

Bolin Lewis: Will one of you representatives please come forward so we can hear you at the podium? And also we'll be asking either Mr. Audette or Mr. Barnes also to make a statement. And your name again, please, sir?

Grant: I'm Richard Grant. I believe the question was problems with blocking vehicle traffic off at the end of the paved road. I don't have any problem with that. Mr. Audette has built a gateway in his fence line so he has access to his front yard. That would be a burden to him. Mr. Barnes, who is renting in the house next door, really doesn't have a driveway. He uses his dad's driveway to access his parking area, and he would need some access at that point also. So, blocking at the end of the paved section is not the best alternative for the use of the people on the street. There may be a point half way down or maybe a blockage that's just narrow enough so that it discourages usage and still allows Mr. Audette to get through because I know he needs that space.

Fisher: So he's using our right-of-way right now to access his driveway?

Grant: No, his driveway is on a paved section of the road, and he can speak for himself if need be, but he has an access to his front yard. It is, I believe it's his leeching field built along the edge of the driveway so he cannot go from his driveway onto the front yard. So access on the grassy sections is still necessary.

Bolin Lewis: Mr. Audette. Please. Then I'll have Commissioner Anderson, Commissioner Infantini, and Commissioner Nelson.

Audette: Thank you, Commissioner Fisher. This is a good topic. I appreciate it. Our gate is a secondary gate that both Mr. Barnes and our property is fronting this right-of-way. It is our frontages, so we appreciate this. We are in favor of cable gate that we would then have a key access to at the end of the street. Perhaps it would suffice for the Corps demands too, because it would essentially prevent the use of the dock, but if everybody had a notion that now we'll have the ramp and nobody else will . . . The bollards are fine. We are willing to give the ramp. We feel environmentally that it should be blocked off, but it's a good point, and yes, we would support a cable gate. I believe they are common in the County, and also would have to have access for the people pedestrian traffic to go to and from with canoes and kayak. But, yes, thank you. That would be a good

option. We would prefer the option of a gate at the end of the pavement. I think Diane said there is a blockade halfway across the street so we're halfway there already.

Fisher: And if we decided to do that, you would oppose to everybody on the street having a key to that gate, the cable gate.

Audette: I would, because it's going to lead to the same type of use that has been generated in the past, and I think you all would have a problem of giving some people a key and the whole County a key; but if that was your decision. So that would be tough, but then again for emergency people and just my gate; or if you want me to move my gate, I would do it. Barnes may have an issue with access. It's their entire front yard that is the grassy right-of-way. So, but thank you for considering it.

Bolin Lewis: Commissioner Infantini, are we through?

Fisher: Well, I guess if we had a paved road to the water then their house would be fronting on this grassy area. That's why you call it your front yard. Am I picturing that right?

Infantini: Here's a picture of what it looks like. This is his house, and here's the road coming down.

Fisher: I got it, but that road continued, and it was asked that would be your front yard? Is that what you're saying?

Audette: Well, for us our front yard, the entire east frontage of our property, which is our frontage is half pavement, then there's a barricade, and then it continues on the grassy right-of-way. For Mr. Barnes it's all his frontage, but he does have a driveway that comes out right into the pavement.

Fisher: And I doubt if we ever do that, but technically we could pave that right-of-way and your house would have fronted on the road just like most, a lot of the other houses.

Audette: Right. We got a fence permit with a gate there as a secondary.

Fisher: I got you.

Bolin Lewis: Commissioner Infantini.

Infantini: I'd like to point out that the picture from 2009, 2007 of the Audette's property showed a well beaten path from their property to go onto the boat ramp; and I have a picture I can show you from Google Earth, and that was prior to their installation of a dock; and once they put up the dock, then they put up a fence as they are entitled to. I mean it is their property, and many people complain that they didn't have a view of the river but that is their property and they are entitled to put up a fence and put up a border. I mean, and I have no problems with that, but it should be noted that prior to them wanting this dock and boat ramp removed . . . And I'll pass this down so you can see that there was a path and

now you'll see that there's now a tree line now that they have a boat dock. So you can see . . . And so it's a bit frustrating for myself as well as these residents that prior to them building a dock they enjoyed the dock, and I'm glad they enjoyed the dock and they enjoyed the boat ramp, but now that they have their own dock and they have a privacy fence, which I don't blame them for. They are entitled to the privacy on their property, but to change the use of an existing piece of property that's been public right-of-way for all of these years, to suddenly restrict it, I don't even understand. And then to worry about the liability of something that is almost ever used. Do you know how many pieces of property, how many pieces of playground equipment . . . We have liability all over the place yet we're choosing this one little dock that infrequently used to pick on and say, oh, we're concerned about the liability. I just, I don't even see it. I cannot even grasp where the risk is that doesn't exist throughout the County on every one of our docks. What if somebody falls off a bridge?

Bolin Lewis: Commissioner Nelson, followed by Commissioner Fisher.

Anderson: Real quick. Commissioner Infantini, since you passed these down, we can give them to the Clerk?

Infantini: Yes.

Nelson: You know, I would prefer actually to have, if we're going to block off the ramp down by the water so you could still you know, drop a kayak or canoe, or you know, and my preference would be, and this is the Parks side coming out, is you still have the ability to go down there and enjoy the water, but we contain the activity some. I do have a concern about the dock from that perspective; but I'd still like to see them be able to launch hand carried boats; and if there's a problem that continues, then the Board can address that at that point in time as opposed to just doing a one fatal swoop. I had concern with the key issue, but I would be okay with blocking it; but I do have a concern with the dock.

Bolin Lewis: Commissioner Fisher.

Fisher: Of course, two things that came to my mind as your were viewing this. One is that boat ramp really wasn't up to standards of a boat ramp we would have anywhere else. You know, it kind of makes sense to kind of eliminate it. But then I thought that the, and most of the neighbors are in support of that, and then I started thinking about the dock; and I started thinking that, be honest, that dock, if we're going to assume the liability, it might not be really in as good a shape as it should be if it's now become our property and our dock. So, my thought now was, okay, get rid of the boat ramp, forget the gate idea especially since he doesn't really want to share with all of the neighbors, but maybe consider using some of Commissioner Infantini's Recreation dollars or something to make sure the boat ramp is shored up if we're going to take . . .

Bolin Lewis: You mean the dock?

Fisher: . . . The dock if we're going to take responsibility of it. So that, and maybe you'll support the budget to do that for those residents. I think that's what makes sense. I'm concerned that we open the liability of the dock we know right now

that we have inherited a dock that really isn't up to standards, and now we're going to continue to let the public use it knowing it's not up to standards.

Infantini: I think the residents are out there trying to say we volunteer to pay for the upgrades needed for the dock. I think that's what they're actually out there calling out, but I can't speak for them; but that's what it looks like they were saying.

Fisher: I was going to say either she has the ability in her budget to you know, help make that happen. So, just got to support the budget when it gets passed. You can't just support some of it, you've got to support all of it even though you may not like all of it.

Bolin Lewis: Commissioner Anderson.

Anderson: No, just getting back to that. You know, and anybody can donate anything to the County anytime they want. If they want to do that with the dock, that's fine or Commissioner Infantini can find money; but, you know, I kind of look at it from view of kind of like adopt the park where you have the volunteers mow on it, and that's something that can be handled later, you know, through Parks and Recreation, but for now we need to block off that ramp; and we do need to make sure at some point that that, and as soon as possible, that dock is safe, because there is a liability if somebody falls through a plank or something. I don't want to remove the dock. I just want to, like Commissioner Fisher said, make sure it's safe.

Bolin Lewis: Commissioner Nelson.

Nelson: You know, one of the things that occurs to me that is a lot of what happened was the amenities at the park, at that, you heard me call it a park, what happens is it became a park, so people from throughout Micco began to use it, and that's when the issue . . . Well, then you guys were real bad from the pictures . . . But there was boat launching going on, there were parties at night, and some of those things. Now that has calmed down. There's no question.

Bolin Lewis: Let Commissioner Nelson speak.

Nelson: If I may, one of the gentleman, and I've got the picture here that shows that, indicated that you had grills, chairs, all sorts of things, so that did happen.

Bolin Lewis: In the past. We're stating in the past.

Nelson: Yes, but I'm trying to bring it up forward. If you turn it into a park setting, then that will encourage people. I did Parks for over 30 years. I probably have an idea of what happens when you put amenities out there. So, you know, the issue then becomes is that the more amenities that you have the more you encourage people, and you can't stop it. You can't stop it, because it is a public right-of-way. So that's the danger of doing that. So, right now it's okay, but that's not to say that next week suddenly teenagers decide that that's an important place to go; and there's no way of stopping that. So that is what happens. So, just keep that in mind. You guys go do . . . I think that turning it

into a park is a wrong thing. I think in a neighborhood location where you guys don't have too much amenities that attract others to come to it works out better in the long run. So, that was my point.

Bolin Lewis: Okay. Commissioner Infantini. Commissioner Fisher.

Infantini: I made a motion, Andy seconded. If you could just . . .

Fisher: I think they said they comfortable with Option 4. I'm just saying from our standpoint, we might just want to shore up, don't add any amenities, just cut the boat ramp, stop the boat ramp use and shore, do anything we need to do, whether we work with a partnership with the neighbors or whatever as far as making sure the boat ramp is safety from here on out, and go after the permit. I think that's . . . And that's not turning it into a park. That's still letting the local residents mingle down there and enjoy the sunset when they want to. I would support that. I don't know if that motion is along those lines.

Infantini: Yes, that's what I meant.

Bolin Lewis: Okay, I have a motion, do I have, all in favor please state Aye.

Fisher, Infantini, Bolin Lewis, Anderson: Aye.

Nelson: I'm going to say Nay. I don't like the dock. You know, I think it's an attraction.

Bolin Lewis: It passes 4:1; Commissioner Nelson, nay.



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

March 20, 2013

MEMORANDUM

TO: John Denninghoff, Public Works Director Attn: Tammy Thomas-Wood

RE: Item VII.A.1., Right-of-Way Use Agreement with MB Not for Profit Landing Corporation for Maintenance of Existing Dock within the Right-of-Way of Mockingbird Lane, Micco

The Board of County Commissioners, in regular session on March 19, 2013, considered Right-of-Way Use Agreement with MB Not for Profit Landing Corporation for maintenance of an existing dock within the right-of-way of Mockingbird Lane, Micco, but took no action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk



**DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
GAINESVILLE FIELD OFFICE
2833 NW 41ST STREET, UNIT 130
GAINESVILLE, FLORIDA 32606**

REPLY TO
ATTENTION OF

July 1, 2014

**Regulatory Division
Special Projects and Enforcement Branch
Enforcement Section
SAJ-2013-00788(SEG)**

**Brevard County
C/o Stockton Whitten, County Manager
2725 Judge Fran Jamieson Way, Bldg. C
Viera, FL 32940**

Dear Mr. Whitton,

Reference is made to a letter dated April 19, 2013 informing you about an unauthorized dock constructed in Waters of the United States and unauthorized fill discharged in Waters of the United States in association with the construction of a gravel and earthen boat ramp, located within County Right of Way property. The project is located on the shoreline of the Saint Sebastian River at the southern end of Mocking Bird Lane, in Section 18, Township 30 South, Range 38 East, Micco, Brevard County, Florida.

Latitude: 27.833608 North Longitude: -80.509335 West

In a letter dated May 8, 2013 you responded that the County assumed neither ownership nor responsibility for the unauthorized dock. However, as the property owner you assume responsibility for work on and persons accessing County property. Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. paragraph 403, prohibits the placing of any structure in or over navigable waters of the United States and excavating from or depositing material into such waters unless the work has been properly authorized by a Department of the Army permit.

The above-mentioned letter does not address the unauthorized boat ramp. In addition to the authority under the Rivers and Harbors Act, the boat ramp was constructed without authorization under Section 404 of the Clean Water Act. The Clean Water Act, 33 U.S.C. paragraph 1344, prohibits discharges of dredged or fill material into waters of the United States and their adjacent wetlands unless the work has been authorized by Department of the Army permit.

The Corps of Engineers (Corps) has also determined that the ramp is a multi-use facility and, as such, the Corps would need to consult with the U.S. Fish and Wildlife Service (FWS) under Section 7 of the Endangered Species Act in order to consider issuance of a permit. However, there is no provision for consultation on after-the-fact projects under Section 7 of the Endangered Species Act. Without the required

consultation, we cannot determine if there would be mitigative measures to ensure that no "take" of the Endangered West Indian Manatee did or would occur from the construction or use of the facility.

The County has several options that could resolve the outstanding unauthorized structure and fill associated with the boat ramp currently located on the property:

1. The County can voluntarily restore the area by removing the unauthorized dock and boat ramp. Once the structure and fill are removed, the area could be restored to pre-violation condition and the violations would be resolved.

2. Should you choose not to voluntarily restore the area, you may apply for an after-the-fact permit for the ramp and the dock; however, pursuant to 33 CFR Part 326.3(e)(1)(v), no after-the-fact application can be accepted until the applicant has provided a signed statute of limitations tolling agreement to the District Engineer. If the County was unable to obtain Department of the Army authorization, a removal of the structures would be required.

3. After the Corps receives a signed Tolling Agreement, the County may apply for a permit for the unauthorized dock as per option 2 above. In order to resolve the issues with the unauthorized boat ramp, this option includes the removal or the blockage of the ramp in the upland area. Removing the ramp or permanently blocking its use would remove/minimize the affect on the Endangered West Indian manatee.

Two copies of the Tolling Agreement referenced above are attached to this letter. If you decide to submit an application rather than remove the structures, please review the two copies of this agreement and sign and return both to Mr. Gallagher at the letterhead address above. The tolling agreements will be countersigned by our Office of Counsel and a copy will be returned to you for your records. The other copy will remain in our file.

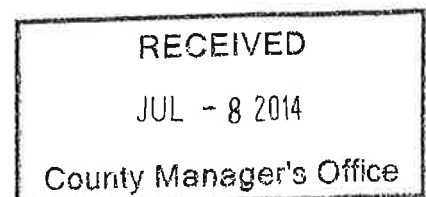
Please respond to this letter within 15 days of the date above. If you have any questions please contact Shaun Gallagher at the letterhead address above, by electronic mail at shaun.e.gallagher@usace.army.mil or by telephone at 352-372-9625.

Sincerely,



Theresa B. Hudson
Chief, Enforcement Section

Enclosure
Tolling Agreement, 2 copies



TOLLING AGREEMENT

WHEREAS, the United States of America, on behalf of the United States Army Corps of Engineers ("Corps") may file a complaint against Brevard County ("potential defendant(s)") for, inter alia, alleged violations of Sections 301(a), 309, & 404 of the Clean Water Act ("CWA"), 33 U.S.C. Sections 1311(a), 1319, & 1344 and/or Section 9, 10, or 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401, 403, or 407, and/or Ocean Dumping Act Sections 101 and/or 103 (33 U.S.C. 1411, 1413), at a site commonly known as County Right-of-Way at the end of Mocking Bird Lane, Section 18, Township 30 S, Range 38 E

WHEREAS, the purpose of any such complaint would be to obtain appropriate injunctive relief and to impose appropriate civil or criminal penalties for potential defendant'(s) alleged violations of the statute(s) cited above;

WHEREAS, the Corps accepted an after-the-fact ("ATF") permit application from the potential defendant(s) in an attempt to settle the above claims;

WHEREAS, both parties believe that their interests will best be served by continuing the ATF permit process without the disruption that might be occasioned should the United States file a complaint in the immediate future;

AND WHEREAS both parties acknowledge the requirement found at 33 C.F.R. 331.11(c) for an applicant for an ATF permit to provide a signed tolling agreement;

THEREFORE, the United States and potential defendant(s) stipulate and agree as follows:

1. The United States and potential defendant(s) agree that the time between the acceptance by the Corps of the ATF permit application and the final Corps decision (as defined at 33 CFR 331.10) will not be included in calculating any statute of limitations that might be applicable to the alleged statutory violation(s) described above. Potential defendants agree not to assert, plead, or raise in any fashion on behalf of any party, whether by answer, motion, or otherwise, any defense or avoidance based on the running of any statute of limitations that may apply during that period or any defense or avoidance based on laches or other principle concerning the timeliness of commencing a civil action, based on the failure of the United States to file its complaint during that period.

2. Potential defendants further agree not to transfer the property in question during the pendency of this tolling agreement nor during the pendency of any civil action brought as described above, without first notifying the United States and giving the United States a reasonable opportunity to oppose such transfer.

3. Nothing in this tolling agreement shall restrict or otherwise prevent the United States from filing a complaint regarding any alleged statutory violation(s) not described above, at any time.

4. This tolling agreement does not constitute any admission of liability on the part of potential defendants; nor does it constitute any admission or acknowledgment on the part of the United States that any statute of limitations has run or that any statute of limitations is applicable to the statutory claims described above.

5. This tolling agreement contains the entire agreement between the parties, and no statement, promise or inducement made by any party to this agreement, or any agent of such parties, that is not set forth in this agreement shall be valid or binding. This tolling agreement may not be enlarged, modified or altered except in writing signed by the parties. This tolling agreement may be executed in counterparts.

FOR the United States of America:

Assistant District Counsel
Jacksonville District, U.S. Army Corps of Engineers

DATE

FOR ("potential defendant(s)")

DATE

Toro, Deanna

From: Bentley, Eden
Sent: Tuesday, July 29, 2014 9:20 AM
To: Denninghoff, John P; Brown, Ernest N; Scott, Mel
Cc: Knox, Scott L; Byrum, Diane
Subject: FW: Extension request (UNCLASSIFIED)

FYI- Please mark all your calendars. Diane, can you please start arranging a meeting to discuss this item again? Thanks, everyone.

-----Original Message-----

From: Gallagher, Shaun E SAJ [<mailto:Shaun.E.Gallagher@usace.army.mil>]
Sent: Thursday, July 24, 2014 11:07 AM
To: Bentley, Eden
Subject: Extension request (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Ms. Bentley,

This is in response to your email dated July 16, 2014, requesting a time extension for responding to the July 1, 2014 letter we sent you. An extension of 60 days has been approved for the County's response.

It is not the intension of the U.S. Army Corps of Engineers (Corps) to remove public access to public property. We have no comment on the County's desire to vacate or the usefulness of vacation of the easement on the property. The Corps is concerned about the continual use of the facility and its impact on the aquatic environment and any listed species. In accordance with 33 CFR 326.3 (d) there may be initial corrective measures that could become permanent(i.e. jersey barriers, bollards, etc.) and effectively resolve the concerns surrounding the project although the implementation of any corrective measures would not resolve the violation. Blockage of the facility from boater use could sufficiently minimize impacts to the aquatic environment and any listed species. We believe that 60 days is adequate time to implement the corrective measures and provide your proposal for resolution of the violation.

Please respond to this email or call at the number listed below if you have any questions.

Shaun Gallagher
Enforcement Project Manager
Regulatory Division
352-372-9625

Please assist us in better serving you! Please complete the customer survey by clicking on the following link: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey

Classification: UNCLASSIFIED
Caveats: NONE

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Classification: UNCLASSIFIED
 Caveats: NONE

Lewis, Sally A

From: wissel6140@aol.com
Sent: Wednesday, September 10, 2014 2:25 PM
To: Lewis, Sally A
Cc: Whitten, Stockton E; Barrett, Pamela A; colls66pony@bellsouth.net
Subject: Fwd: Mockingbird Dock Pics from Bob Audette
Attachments: photo_1.JPG; photo_2.JPG; photo_3.JPG; photo_4.JPG; photo_5.JPG

Sally, please let me know if you can add this e-mail and photos as back-up to the add on agenda report VA5 for next Tuesdays meeting.
Thanks, Bob Audette.

-----Original Message-----

From: wissel6140 <wissel6140@aol.com>
To: stockton.whitten <stockton.whitten@brevardcounty.us>
Sent: Sun, Aug 24, 2014 6:20 pm
Subject: Mockingbird Dock Pics from Bob Audette

Mr. Whitten, thank you for meeting with Colleen, my wife, and also updating her that the dock issue will have to be presented to the commission again.

I have attached some photos taken this weekend of the present condition of the dock. They show what the engineers letter we presented at the last meeting said, the dock now is very close to collapsing.

The tape measure shows that the distance from shore out to the only 2 existing pilings is 24 feet, which is more than any typical dock construction can span, and not high enough to use for any type of permitted repair or reconstruction.

The failed and failing intermediate posts are 4x4's not treated for water immersion.

Please let me know if you can include these in the agenda packet.

Or hopefully they will not be necessary if in fact that a "squatters shack" should have never been allowed to exist on public property to begin with.

Also during the last meeting there was some reference and discussion about the history of the dock dating back to and being shown on the original plat, which it's not. In fact the original plat is dated 1956 and the C-54 was not in existence. The C-54 canal was done around 1970.

As for the ramp, it was not there when we bought our property in 2007. We did see 2 instances of others dumping marl and stone in the river, but mistakenly did not document or report it.

I think most of the commissioners will appreciate as much fact based information as possible when presented with this again.

Colleen and I both very much appreciate your help.

Bob Audette.

Daytime; 772-234-8900.

Anytime cell; 772-473-3742.

-----Original Message-----

From: Wissel6140@aol.com <wissel6140@aol.com>
To: wissel6140 <wissel6140@aol.com>
Sent: Sun, Aug 24, 2014 4:19 pm

Sent from my iPhone

Lewis, Sally A

From: wissel6140@aol.com
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 Colleen and I both very much appreciate your help.
 Bob Audette.
 Daytime; 772-234-8900.
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 To: wissel6140 <wissel6140@aol.com>
 Sent: Sun, Aug 24, 2014 4:19 pm

Sent from my iPhone











September 10, 2014

TO: Brevard County Commissioners

Brevard County Manager, Stockton Whitten

FROM: Dr. Hamid Beladi, Owner at 9695 Mockingbird Lane

**SUBJECT: DOCK ISSUE TO BE DISCUSSED AT THE SEPTEMBER 16, 2014
BREVARD COUNTY COMMISSION MEETING**

As owner of the property which borders the right of way for the dock in question, we would ask the Brevard County Commission do two things:

1. **TAKE THE DOCK OUT.** There are residents still driving on the right of way. Ask yourself if you would want cars driving right next to your house day or night. This dock and right of way is a constant source of tension between residents of the neighborhood. The sheriff has been called many times over the dock and right of way issue. This is not a public park and will never be deemed such. It does not have, and never has had, a permit. It is an illegal dock. Who is going to pay for the lawsuit when someone gets hurt on the dock and the county is sued for failing to take action? Both neighbors who abut the right of way and dock want it removed. Please follow the law and remove the dock in time certain.
2. **ALLOW THE RESIDENTS ON EITHER SIDE OF THE RIGHT OF WAY TO MANAGE AND MAINTAIN THE RIGHT OF WAY AND LIMIT PUBLIC ACCESS TO INGRESS AND EGRESS ONLY. REMOVE AUTOMOBILE ACCESS TO THE RIGHT OF WAY.** There are many public parks in the county for residents to access the water – with public facilities. Those residents on the water pay significantly higher taxes for the right to access the water. Because of the tension over the dock, a few of the street residents make a point of sitting on the right of way as a means of causing distress to the waterfront residents – and they are still driving on the right of way – day and night. Just removing the dock will not eliminate source of the problem. There should not be public access to the

right of way as though it were a public park. If this is not properly handled, it will continue to be a problem.

THIS LETTER THEN SUPPORTS OPTION #2 IN THE BREVARD COUNTY COMMISSION AGENDA FOR SEPTEMBER 16, 2014. IT IS REQUESTED THAT YOU ACT QUICKLY AND MAKE A DECISION TO RESOLVE THE ISSUE AT THIS MEETING. I WOULD ASK THAT MY BROTHER-IN-LAW, MR. TOM BARNES, BE ALLOWED TO SPEAK ON MY BEHALF SINCE I CANNOT ATTEND THE MEETING.

Respectfully submitted,

Dr. Hamid Beladi

Whitten, Stockton E

From: James McMillan
<mcfuture@bellsouth.net>
Sent: Thursday, September 11, 2014 7:50 AM
To: Whitten, Stockton E
Subject: Re: an idea that makes sense

Mr. Whitten,

Thank you for getting back to me on this matter Jim McMillan On Sep 10, 2014, at 12:50 PM, Whitten, Stockton E wrote:

> Mr. McMillan,

>

> Thank you for your insight. The final agenda on this item will be distributed today. The agenda does not choose sides but simply gives the Board all available options, including on advice of the County Attorney's Office the option to vacate. While I understand that a number of the neighbors have spoken with the Army Corp representative, the County can only respond to what the Army Corp has placed in writing to us.

>

> Thank you again and we look forward to the Board resolving this issue on Tuesday.

>

> Stockton Whitten

> County Manager

> 2725 Judge Fran Jamieson Way

> Viera, Florida 32940

>

>

> -----Original Message-----

> From: James McMillan [<mailto:mcfuture@bellsouth.net>]

> Sent: Wednesday, August 27, 2014 11:13 AM

> To: Whitten, Stockton E

> Subject: an idea that makes sense

>

> Mr. Stockton,

> I am wondering if we may get together soon at your office, in reference to the Mockingbird Lane dock? I have received all the correspondence and am familiar with this situation, and as I had stated before, I have been able to achieve peaceful resolutions throughout the area, even without much cooperation. I can help you get this one put to rest. Theresa Hudson, from the Army Corps and her associate, Shaun, have explained how simple this can be and I have pledged to be the liason. As Ms. Hudson stated, the two adjacent neighbors to the dock knew when they purchased the properties that the dock was there and the residents had been maintaining the area for sixty two years. In fact both of those parties joined in to use the area. The ArmyCorps stated to me that if the "boat ramp" (which is actually used only by the adjacent neighbors for launching) were to be blocked with three or four pilings, allowing for kayakers to pass, Fish & Wildlife would withdraw their complaint and the Corps would propose that the county apply for the existing dock to be authorized. The authorization document would be processed at Ms. Hudson's office and would then remove liability

from the county. An authorized dock puts any accident with a boater back on the boater. The Corps is ready and willing to proceed quickly.

>

> Now, for the ongoing conundrum between the majority of the residents and the two adjacent neighbors who seem to be trying to have the property to themselves...Proposal to deed equal parts to all the land and homeowners of the lane (22) and the county to retain perpetual easement for ingress and egress for the county and general public, which would align with the document on file. The residents would maintain the open area and keep the dock and surrounding areas in good repair. The residents would agree to improve the area annually. If necessary this 1/22 of the property could even be added to to each owner's tax bill. I believe this is legal and we could finally find resolution to this dilemma. The only steps needed are the county to install some barriers, the county to apply for authorization of the dock and a deed change. I will be on hand to facilitate, draw up the barrier plan, work with mr. Dennehoff and the Army Corps.

>

> Than you in advance. If this makes sense, I would propose a meeting with you, Mr. Denehoff and one of your attorneys, and Ms. Infantini, if she would like. Everyone at the county has been extremely cooperative and I would just be so happy if they did not have to hear about this anymore.

> Jim McMillan

> 772-664-8406 321-355-0689

>

>

> -----

>

> Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Whitten, Stockton E

From: James McMillan
<mcfuture@bellsouth.net>
Sent: Thursday, September 11, 2014 9:05 AM
To: Whitten, Stockton E
Cc: rappyperez@yahoo.com
Subject: response

Mr. Whitten,

I am wondering, since Option #1, the favored action at this point, is to vacate the waterfront property, what is the problem with vacating the property to the Arens Wild Acres property and homeowner. The homeowners are willing to set up an HOA with all the documents and liability insurance required. It will not reflect well on the county if a single obnoxious homeowner is able to manipulate the county into increasing her property value by this action and adversely affecting the deeded property which had been used by the residents and other taxpayers for over sixty years.

Jim McMillan

Lewis, Sally A

From: James McMillan <mcfuture@bellsouth.net>
Sent: Sunday, September 14, 2014 1:44 PM
To: Lewis, Sally A
Subject: Giving away taxpayer property

September 14, 2014

Ms. Lewis

I Carol McMillan, am a resident of Mockingbird Lane, in Brevard County, Florida, responding to your letter, regarding the free of charge, transfer of County owned land to adjacent property owners.

I am adamantly opposed to the above mentioned "giving away," .of County owned i.e. taxpayer property for the following reasons:

1. The aforementioned action would not benefit the majority of residents on mockingbird Lane. It would prohibit them from accessing a portion of property that is enjoyed by all.
2. It would decrease their property value while increasing the property value of the adjoining lots.
3. It would escalate the level of animosity toward the "adjoining property owner," who have fabricated incidences, for their personal gain, and tortured peaceful, tax paying Mockingbird residents, who attempted to enjoy the river at the end of their street.
4. In the future the county may need the property and would have to purchase it at taxpayer's expense.

In closing I would like to pose several questions to all of the Brevard County Commissioners who will be voting on this issue.

How can Brevard County representatives justify in good conscience, taking property from the residents of Mockingbird Lane, and giving that property to adjacent property owners? What benefit is this action going to provide to the residents of Mockingbird Lane and to Brevard County? What do the two adjacent property owners have in their favor that the majority of residents do not have?

Sincerely
Carol McMillan
Resident of Mockingbird Lane

Lewis, Sally A

From: Commissioner, D3
Sent: Monday, September 15, 2014 2:59 PM
To: Lewis, Sally A
Cc: Infantini, Trudie; Helton, Lori
Subject: FW: Mockingbird Lane Dock

Sally,
Will you please attach the below email to Agenda Item V.A.5 - Mockingbird Lane.
Thank you,
Linda

Linda Mannier
Chief Legislative Aide
District 3 Commission Office
1311 E. New Haven Ave.
Melbourne, Florida 32901
(321)952-6300

-----Original Message-----

From: Jillian S Hinds [<mailto:jillianshinds@aol.com>]
Sent: Saturday, September 13, 2014 8:36 AM
To: Commissioner, D3
Cc: Michael Schoeller
Subject: Mockingbird Lane Dock

Good Morning,

I heard from some neighbors that you were in the neighborhood yesterday and I'm sorry we missed you. Both my husband and I plan to be at the meeting on Tuesday to speak our peace about the county's concern for additional liability associated with the unpermitted dock on county land at the end of Mockingbird Lane. Because as I see it THAT is the issue not the stupid neighbor squabbles and lies I've heard the adjoining property owners/renters have been telling.

That land has been used by local county citizens to access the unique and unspoiled ecosystem of the Sebastian River and the greater Indian River Lagoon for many more years than the eight years we have lived on the street.

A process is in place to make the dock permitted thereby bringing liability of the county to the same level as for all other county lands.

The issue before the council is not the bad blood between neighbors, although the majority of the neighbors developed and have adhered to a set standards of behavior and use of the county property more than a year ago in order to help alleviate the concerns of the adjoining property owners.

I am disgusted and sickened by what I am now hearing is being said. My husband and I are in support of the dock, continued use of public land to enjoy one of the few remaining undeveloped waterfront green spaces in this county, and we want to share that with the next generation, our daughter, whom we are teaching to appreciate and love all aspects of nature.

Anything we can do to help, please let us know.

Jillian Schoeller
9640 Mockingbird Lane.

P.S. Please feel free to distribute or use this email as you see fit in support of the dock, continued public use of county ROW on our street.

Lewis, Sally A

From: Nelson, Chuck S
Sent: Monday, September 15, 2014 3:51 PM
To: Lewis, Sally A
Cc: Whitten, Stockton E; Alward, Elizabeth M
Subject: FW: Commissioner Infantini Lack of Professionalism
Attachments: Scan0047.jpg

Sally,
 Will you please attach the below email to Agenda Item V.A.5 - Mockingbird Lane.
 Thank you,

Chuck

Chuck Nelson
 District 2 County Commissioner
 2575 N. Courtenay Parkway
 Merritt Island, Fl 32953
 Phone: (321)454-6601
 Fax: (321)454-6602
chuck.nelson@brevardcounty.us

From: D LB [<mailto:dbeladi@hotmail.com>]
Sent: Sunday, September 14, 2014 4:07 PM
To: Commissioner, D1; Commissioner, D2; Commissioner, D4; Commissioner, D5
Subject: Commissioner Infantini Lack of Professionalism

I have attached a letter from Commissioner Trudie Infantini which was sent to some residents on Mockingbird Lane. We own a residence on Mockingbird Lane but were not mailed a copy - getting a copy only through a neighbor. One would hope that all residents would be copied on official county business - not just the group the Commissioner supports. This is not the first time that selective mailings were used by Commissioner Infantini on this topic. We were excluded from her mailing before the March 13, 2013 Commission meeting also.

This letter is one-sided and inflammatory trying to rile up the residents that a public right of way will be vacated and made unavailable to them. It is especially frustrating that vacating the property is used as the inflammatory scenario when the homeowners adjacent to the right of way told the Commission, in writing, that we do not wish the right of way vacated. Commissioner Infantini uses the following phrases: "all residents will lose their right to access the property"; "the adjacent property owners will be free to do whatever they want with the land"; and "the transfer of land will be free of charge". This is all inflammatory and not something we even considered or want. She knows this is a contentious issue on the street and this is irresponsible behavior.

I would hope that a County Commissioner would be more professional, and furthermore, they are supposed to represent all residents in their district.

On March 19, 2013, some of you voted in a manner that disagreed with Commissioner Infantini on the matter of the Homeowners Association on Mockingbird Lane. There have been attempts to move voting on the matter of the illegal dock until after November, 2014. I can only think it is to wait until a new slate of commissioners would be more agreeable to Commissioner Infantini's views.

I have been, and continue to be, extremely disappointed in the lack of professionalism shown by Commissioner Infantini.

Sincerely,

Dr. Hamid Beladi and Donna L. Beladi
Owners of 9695 Mockingbird Lane

> Homeowner 9695 Mockingbird Lane

BREVARD County

BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST



District 3 Commission Office
1311 E. New Haven Avenue, Melbourne, FL 32901

Telephone: (321) 952-6300
Fax: (321) 952-6340
www.brevardcounty.us

On September 16th, the Brevard County Commissioners will seek to find a solution to the complaints that have been posed by the adjacent property owners of the dock at the south end of Mockingbird Lane. One of the three following actions will be taken:

- 1) The dock will be vacated, and the land will be given to the adjacent property holders. This will mean that all other residents will lose their right to access the property, and the adjacent property owners will be free to do whatever they want with the land.
- 2) The dock and the boat ramp will be removed from the property.
- 3) The boat ramp will be blocked to all motorized vessels. Residents will be allowed to continue using the dock, property, and boat ramp with non-motorized vessels.

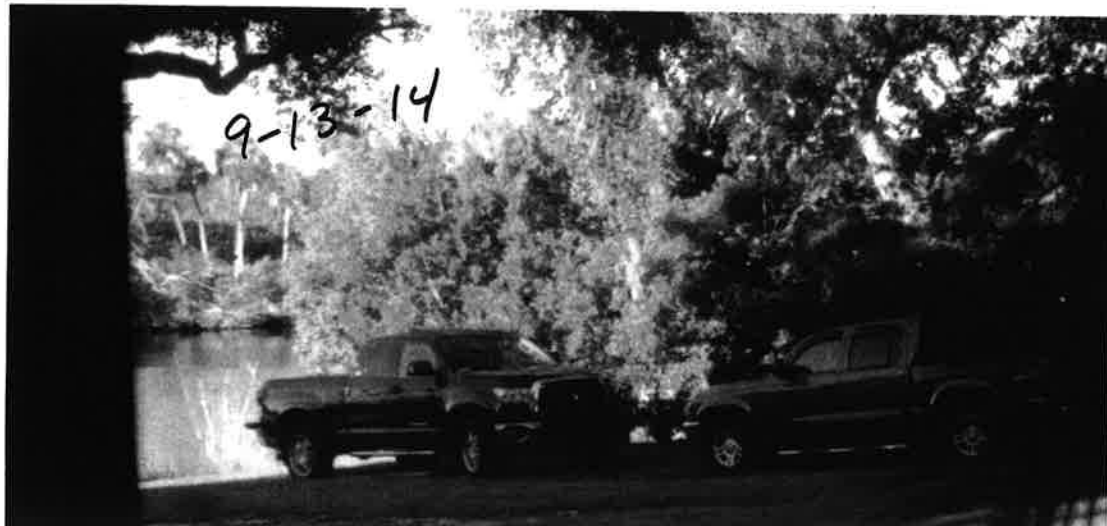
The Brevard County Commissioners would like to know how the residents of Mockingbird Lane feel about the removal of public access to county-owned land, and the transfer of this land to the adjacent properties free of charge. The meeting will take place on September 16th at the Viera Government Center, and it will start at 9:00am. You will be allowed to voice your opinion to the commissioners at this time. If you cannot make it to the meeting, please email your comments to Sally Lewis at sally.lewis@brevardcounty.us.

Sincerely,

Trudie Infantini
Brevard County Commissioner
District 3

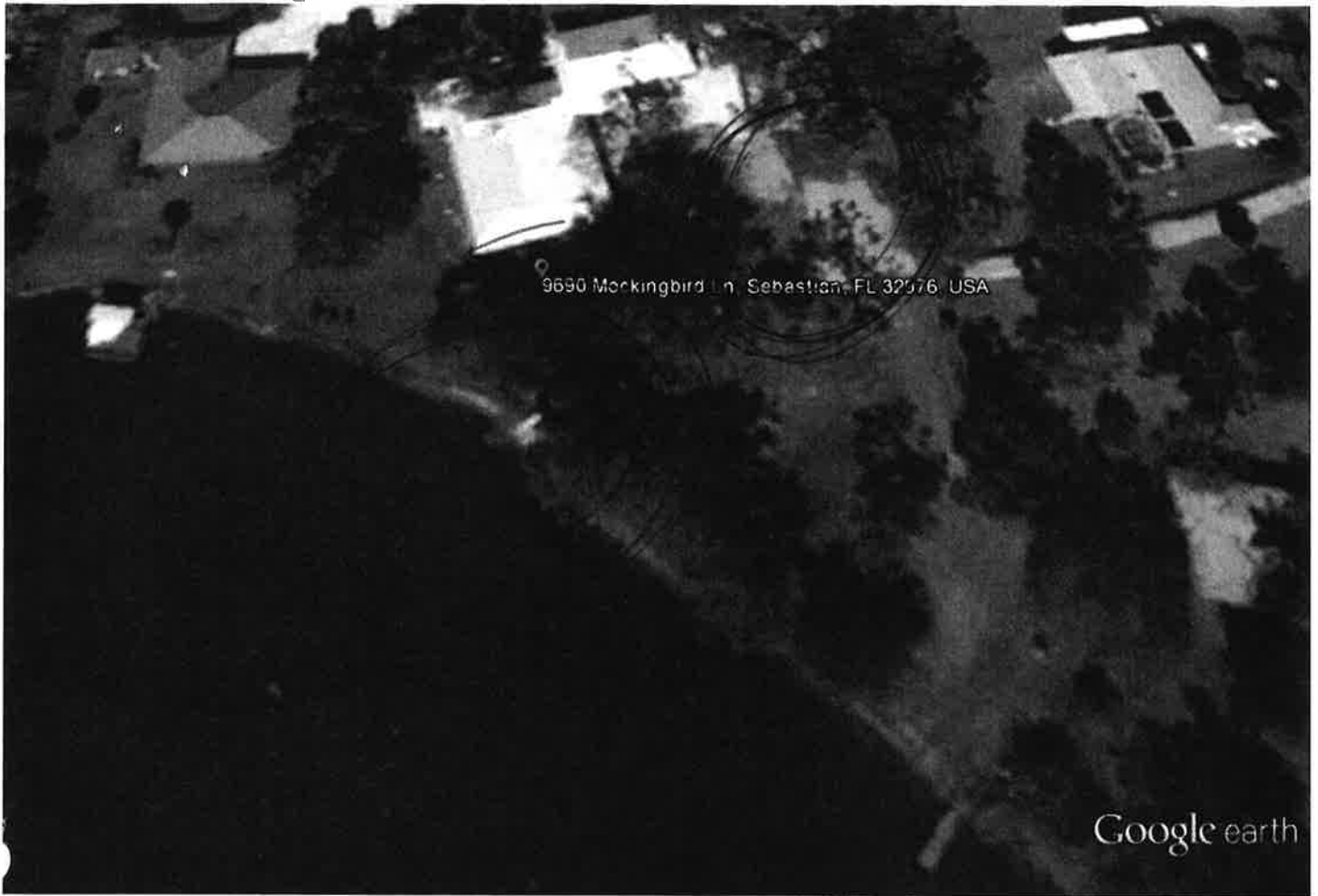
TJI/bcb





Given by D3

V.A.S



9690 Mockingbird Ln, Sebastian, FL 32976, USA

Google earth

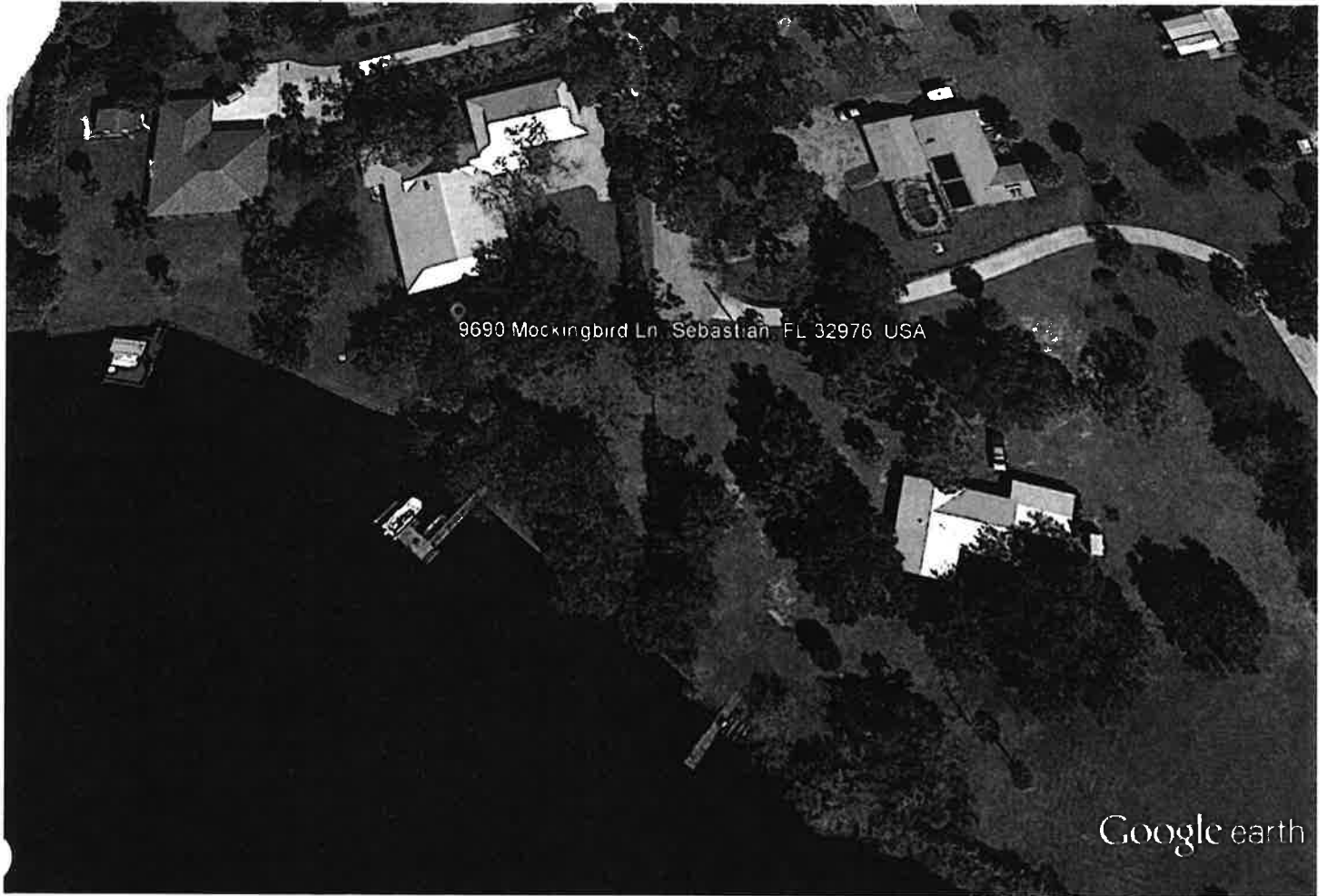
Google earth



Jan 22, 09

Given by D3

V.A.S



9690 Mockingbird Ln, Sebastian, FL 32976, USA

Google earth

Google earth



Mockingbird Lane - Micco



Dock



Sunset from Dock

(1)



County Access To River-Audette fenced hedge on right



Boat Launching Ramp

(2)



No Trespassing Sign on Audette Fence Facing County Land



No Trespassing Sign on Beladi Tree Facing County Land



River View Before Audette Hedge



View Of River After Audette Hedge

(4)



View of Audette Fenced and Hedged Front Yard



View of Audette Fenced and Hedged Side Yard



Distance and View of Audette Dock from County Land



View of Audette Home Blocked 100% from Dock

(6)

V, A, S

First Choice Properties, Inc.

7656 U.S. Hwy. #1
Micco, Florida 32976
(772)664-0066
FAX: (772)664-6616

"LITTLE WHITE BUILDING WITH THE
BRIGHT BLUE AWNINGS"
North of traffic light at Barefoot Bay

September 15, 2014

Re: 9685 Mockingbird Lane , Micco ,FL 32976

To Whom It May Concern :

The above referenced property was purchased by Dianna I. Bovender & Charles R. Carlson Jr for the access to the Sebastian River at the end of Mocking bird Lane. The river access increases the value of the property in the range of \$50,000.

If you have questions or concerns please do not hesitate to phone me.

Regards,



Linda J Stryker
Broker

From: wissel6140 <wissel6140@aol.com>
To: colls66pony <colls66pony@bellsouth.net>
Cc: wissel6140 <wissel6140@aol.com>

Subject: dock

Date: Sun, Sep 14, 2014 4:44 pm

Bob Audette 9690 mockingbird ~~lane~~ **LANE**

I think there is an important letter missing in your packets today.

It's the letter from Mel Scott stating that the county is not responsible for the dock and also suggests the maintenance use agreement may still be an option.

Both are wrong.

So the corps letter you see now is actually in reaction to the countys previous denial of responsibility.

I think the repairs done to the dock, 10 days after my letter and pictures were sent to Mr. Whittens office, were wrongly allowed to happen.

These repairs were to exactly the same failures I outlined in my letter.

I only ask that you consider the dock today in the failed condition I documented on Aug. 25.

I believe someone on staff had said that when the dock falls into significant disrepair as to become an attractive nuisance health hazard it would need to be demolished.

I think 2 of this boards previous decisions are relevant to todays issue:

First, In the Skylark Drive item you ruled out vacating right of ways that lead to water.

We and the Beladi's get this, and have not asked for this to be an option in regards to this matter.

There was also much discussion on ways to control usage and keep public ingress and egress that I would like to discuss if time permits.

Second, in the Hanna dock removal item Dec. 11 of 12, one simple statement by county attorney Knox seems to give clear direction in todays matter.

I quote form the record "Mr. Hanna does not have vested rights because he did not have the proper ownership to begin with; and a person cannot get a permit on another persons property and claim vested rights. end quote.

This statement seems to me to absolutely remove any possible argument about grandfathered existence being allowed and give clear direction that the dock should be removed immediately.

Please remember:

Voting today to remove the dock and close off the ramp will ABSOLUTELY NOT take away any persons right for proper ingress and egress to the river.

Nor will it create a precedent that can be challenged in the future. *as preferential spot zoning*

It will positively end the Corps enforcement action.

It will be the lowest cost option and surely will prevent any future staff time to be spent needlessly.

Lewis, Sally A

From: Nelson, Chuck S
Sent: Monday, September 15, 2014 3:51 PM
To: Lewis, Sally A
Cc: Whitten, Stockton E; Alward, Elizabeth M
Subject: FW: Commissioner Infantini Lack of Professionalism
Attachments: Scan0047.jpg

Sally,
 Will you please attach the below email to Agenda Item V.A.5 - Mockingbird Lane.
 Thank you,

Chuck

Chuck Nelson
 District 2 County Commissioner
 2575 N. Courtenay Parkway
 Merritt Island, Fl 32953
 Phone: (321)454-6601
 Fax: (321)454-6602
chuck.nelson@brevardcounty.us

From: D LB [<mailto:dbeladi@hotmail.com>]
Sent: Sunday, September 14, 2014 4:07 PM
To: Commissioner, D1; Commissioner, D2; Commissioner, D4; Commissioner, D5
Subject: Commissioner Infantini Lack of Professionalism

I have attached a letter from Commissioner Trudie Infantini which was sent to some residents on Mockingbird Lane. We own a residence on Mockingbird Lane but were not mailed a copy - getting a copy only through a neighbor. One would hope that all residents would be copied on official county business - not just the group the Commissioner supports. This is not the first time that selective mailings were used by Commissioner Infantini on this topic. We were excluded from her mailing before the March 13, 2013 Commission meeting also.

This letter is one-sided and inflammatory trying to rile up the residents that a public right of way will be vacated and made unavailable to them. It is especially frustrating that vacating the property is used as the inflammatory scenario when the homeowners adjacent to the right of way told the Commission, in writing, that we do not wish the right of way vacated. Commissioner Infantini uses the following phrases: "all residents will lose their right to access the property"; "the adjacent property owners will be free to do whatever they want with the land"; and "the transfer of land will be free of charge". This is all inflammatory and not something we even considered or want. She knows this is a contentious issue on the street and this is irresponsible behavior.

I would hope that a County Commissioner would be more professional, and furthermore, they are supposed to represent all residents in their district.

On March 19, 2013, some of you voted in a manner that disagreed with Commissioner Infantini on the matter of the Homeowners Association on Mockingbird Lane. There have been attempts to move voting on the matter of the illegal dock until after November, 2014. I can only think it is to wait until a new slate of commissioners would be more agreeable to Commissioner Infantini's views.

I have been, and continue to be, extremely disappointed in the lack of professionalism shown by Commissioner Infantini.

Sincerely,

Dr. Hamid Beladi and Donna L. Beladi
Owners of 9695 Mockingbird Lane

> Homeowner 9695 Mockingbird Lane

V.A.5

First Choice Properties, Inc.

7656 U.S. Hwy. #1
Micco, Florida 32976
(772)664-0066
FAX: (772)664-6616

"LITTLE WHITE BUILDING WITH THE
BRIGHT BLUE AWNINGS"
North of traffic light at Barefoot Bay

September 15, 2014

Re: 9685 Mockingbird Lane , Micco ,FL 32976

To Whom It May Concern :

The above referenced property was purchased by Dianna I. Bovender & Charles R. Carlson Jr for the access to the Sebastian River at the end of Mocking bird Lane. The river access increases the value of the property in the range of \$50,000.

If you have questions or concerns please do not hesitate to phone me.

Regards,



Linda J Stryker
Broker