

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

STATE BOARD OF ADMINISTRATION
DEPARTMENT OF VETERANS' AFFAIRS
ADMINISTRATION COMMISSION

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on October 4th,
2011, commencing at 9:04 a.m.

Reported by:
CAROLYN L. RANKINE
Registered Professional Reporter
Notary Public

ACCURATE STENOTYPE REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

ADAM H. PUTNAM
Commissioner of Agriculture

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

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(Presented by ASH WILLIAMS)

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P R O C E E D I N G S

(Presentation commenced at 9:26 a.m.)

GOVERNOR SCOTT: So before we get started with the Cabinet agencies, I've asked Ash Williams -- good morning, Ash -- with the State Board of Administration to present on the availability of FRS Pension Plan information.

MR. WILLIAMS: Good morning, Governor and cabinet meeting -- or Cabinet members, thank you for having me in. A couple of points on availability of information for our beneficiaries. First, probably the easiest way for FRS beneficiaries to remain current is through our Web site and that of the Florida Division of Retirement.

SBA's Web site includes not only extensive information about our organization, our governance, trustee structures, our supervisory and oversight bodies including the Investment Advisory Council, our participant local government advisory council, and our independent audit committee, our audits are online and available, our commercial external audits, audits from the Florida Auditor General, *et cetera*.

1 We also have considerable information
2 about our portfolio and our investment
3 performance. All of the reports that we submit
4 to you, monthly and quarterly reports,
5 including those quarterly reports that we
6 review in the public meetings each quarter of
7 the IAC and the trustees that come from Hewitt
8 EnnisKnupp outlining investment performance
9 proprietary -- the -- the propriety of our
10 investment models and business models and our
11 portfolio structure are there together with
12 actual and relative performance against our
13 benchmarks. So I think our beneficiaries at
14 any point in time can get a very clear
15 understanding of what's going on.

16 We also have historical information about
17 the funding level of the pension fund, which I
18 know is something that's important and we want
19 people to understand funded status, and the
20 fact that funding has varied over the years.
21 It peaked in I believe 2000 -- '98, has been
22 down subsequently, and is currently hovering in
23 the high 80s.

24 Additionally our Web site has a number of
25 white papers on subjects of frequently asked

1 questions, we call them At-A-Glance pieces.
2 And we want to make it easy when there is
3 something out there in the world that --
4 particularly something that could be upsetting
5 to people, whether it's a news piece, or market
6 event, or something -- we try to and put
7 something up that's responsive to it to help
8 people digest what's going on around them.

9 We also have links to a number of other
10 Web sites, not the least of them the Division
11 of Retirement, which has a number of things
12 specific to the benefits side of the pension
13 system. We are focused on investments,
14 Division of Retirement handles benefits.

15 On the defined contribution side, which
16 the SBA manages, we contract out the benefits
17 management and we have links to sites of
18 appropriate information sources there among our
19 contractors.

20 We also have available to all FRS
21 beneficiaries advisory services that are
22 contracted for through Ernst & Young. And that
23 is a terrific way for people to get customized
24 advice that suits their personal situation,
25 time in their career, benefit elections --

1 GOVERNOR SCOTT: Ash, can I ask you a
2 quick --

3 MR. WILLIAMS: -- *et cetera*.

4 GOVERNOR SCOTT: -- question?

5 MR. WILLIAMS: Yes, sir.

6 GOVERNOR SCOTT: So if I may -- if I'm a
7 participant in the plan, I can get on there on
8 a daily basis --

9 MR. WILLIAMS: Right.

10 GOVERNOR SCOTT: -- and so you got
11 investments in bonds --

12 MR. WILLIAMS: Right.

13 GOVERNOR SCOTT: -- they have -- you know,
14 like the plan has investment in bonds,
15 different types of equities, okay, some
16 private, some public.

17 MR. WILLIAMS: Right.

18 GOVERNOR SCOTT: So on the bonds, how
19 often is that marked to market?

20 MR. WILLIAMS: The bonds are marked to
21 market daily, the Web site however is not a
22 real-time Web site.

23 GOVERNOR SCOTT: So how often would the
24 update -- how often would it be updated?

25 MR. WILLIAMS: Probably with the monthly

1 reports that we do.

2 GOVERNOR SCOTT: The monthly --

3 MR. WILLIAMS: Now, understand that the
4 portfolio contains thousands and thousands of
5 positions --

6 GOVERNOR SCOTT: Yeah, right. So it would
7 be impossible to do it.

8 MR. WILLIAMS: -- so trying up to update
9 the entire thing daily --

10 GOVERNOR SCOTT: So on a monthly basis --
11 on a monthly basis you can look at all the --
12 you can look at the market value of all the
13 bonds, okay. Now, on the bonds there is not a
14 lot of risk as far as -- it's not accurate
15 data, right, and that's pretty easy to get
16 public data, right?

17 MR. WILLIAMS: Yes, I think that's
18 correct. And I want to be very clear, the
19 monthly reports we're providing are not by
20 position. They're --

21 GOVERNOR SCOTT: No.

22 MR. WILLIAMS: -- aggregate performance by
23 asset class together with benchmark performance
24 and the relationship between actual and
25 benchmark.

1 GOVERNOR SCOTT: Okay. That's bonds. And
2 then on the public equities, again, you
3 wouldn't do -- you don't do it by position on a
4 monthly -- do you do it by position on a
5 quarterly basis?

6 MR. WILLIAMS: We do a holdings report on
7 a quarterly basis, yes, by position.

8 GOVERNOR SCOTT: And -- but on a monthly
9 basis, would you do it by asset class?

10 MR. WILLIAMS: We do it by asset class,
11 yes.

12 GOVERNOR SCOTT: Okay. So then the
13 hardest one is if you have any private
14 investments or any hedge funds. Okay. And
15 right now what percentage of the portfolio is
16 in things that are harder to value?

17 MR. WILLIAMS: If you look at the things
18 like private equity, opportunistic credit,
19 hedge funds, it's around nine percent. If
20 you -- the other area other than those sorts of
21 investments that is not valued daily is real
22 estate because of the nature of the asset
23 obviously.

24 GOVERNOR SCOTT: Right.

25 MR. WILLIAMS: And that is valued

1 considerably less frequently. And the current
2 allocation in the real estate area is six,
3 seven percent, in there.

4 GOVERNOR SCOTT: So nine plus six to seven
5 so --

6 MR. WILLIAMS: Correct.

7 GOVERNOR SCOTT: -- 15, 17 percent --

8 MR. WILLIAMS: Correct.

9 GOVERNOR SCOTT: -- something like that
10 would be in asset classes that's a little
11 harder to get because there's not like it's the
12 exact same --

13 MR. WILLIAMS: That's right.

14 GOVERNOR SCOTT: -- piece of property or
15 anything like that.

16 Okay. All right. And then how much data
17 is there on -- so when you put money into a
18 hedge fund or anybody that's running a group of
19 assets for you, how often do you update that
20 data? Is that the quarterly data?

21 MR. WILLIAMS: Yes.

22 GOVERNOR SCOTT: Okay. So if it's -- all
23 right. And is the information as far as the
24 terms of that, how often -- how much of that is
25 public information?

1 MR. WILLIAMS: When you say the terms, you
2 mean terms --

3 GOVERNOR SCOTT: Yeah.

4 MR. WILLIAMS: -- of individual --

5 GOVERNOR SCOTT: How they get paid.

6 MR. WILLIAMS: -- investment agreements?

7 GOVERNOR SCOTT: Yeah. How the hedge fund
8 gets paid and things like that.

9 MR. WILLIAMS: Generally what's publicly
10 available is the fees that are paid, the amount
11 of money that is committed, to the extent it's
12 a committed capital structure, which is where
13 you say to the investment manager you may
14 invest up to X, instead of funding it all at
15 once, the manager calls capital when they find
16 investment opportunities and you provide the
17 capital as it's called. To the extent that
18 it's a structure like that, we would explain
19 what is committed and what is called so it's
20 clear how much is committed but uncalled.

21 GOVERNOR SCOTT: Okay. And who -- are
22 there states -- and I know -- well, are there
23 states that are able to have come up with a
24 better way of getting information out than what
25 we're doing? Have you found any states that

1 have more timely or more detailed information
2 than what we're able to put out?

3 MR. WILLIAMS: Not necessarily. There's
4 always a chance that someone will find a better
5 way and we're always looking for that. It's
6 actually more frequently the other way around.
7 We have other entities coming to us saying,
8 gosh, we really like what you've done here and
9 we'd like to emulate it. Can you tell us how
10 you did this or that.

11 That said, we're always looking to do
12 more. We've expanded our Web site pretty
13 substantially in recent years and I think we'll
14 continue going in that direction as people get
15 more and more accustomed to the web being a
16 primary source of information for life.

17 GOVERNOR SCOTT: And if there's a -- if a
18 member wants more information, is there a
19 process that they can ask for it?

20 MR. WILLIAMS: Yes. We have a contact
21 click, if you will, on our Web site which goes
22 directly to our director of communications. We
23 get a handful of emails on that. We respond to
24 those directly and personally. If there's
25 anything that suggests it would be beneficial

1 for that individual to have a conversation to
2 better develop a perspective, we'll call them
3 back. And it's not uncommon for me to call
4 people myself and talk with them.

5 We take our beneficiaries quite seriously,
6 we value their trust, we want them to
7 understand what's going on. And especially
8 when you're in markets like the ones we've seen
9 over the past few years, there are lots of
10 things to give people pause and can wake them
11 up at night.

12 And part of the way we view our
13 responsibility is to be honest with people
14 about good news and bad --

15 GOVERNOR SCOTT: Right.

16 MR. WILLIAMS: -- and tell them what's
17 there that they ought to be worried about and
18 be straight with them.

19 GOVERNOR SCOTT: Okay. All right. Go
20 ahead. I'm sorry I interrupted you.

21 MR. WILLIAMS: Well, I think I've covered
22 most of what I was going to cover on
23 availability. I would also say that all of the
24 FRS member employers -- and keep in mind 80
25 percent of the Florida Retirement System assets

1 are not state employees, they're local
2 government entities. But all of those local
3 employers have retirement coordinators. We
4 provide information regularly to them that they
5 in turn can share to their underlying
6 beneficiaries at each employer.

7 And to the extent there are meetings of
8 employer groups, for example, the biggest
9 retiree group is retired educators, because
10 there are lots and lots of school teachers over
11 the years who have been members of the
12 retirement system. I personally go to their
13 meetings whenever I can, either regional or
14 local meetings or statewide meetings, and have
15 consistently been available directly for as
16 long as they would like to make a presentation,
17 and then stick around and do questions and
18 answers afterwards. And you get a lot of
19 really good questions at those events.

20 Lastly I would say that the public
21 meetings as you now all know having been
22 through several of them, of our trustees, our
23 Investment Advisory Council, the local
24 government advisory council, and our audit
25 meeting -- audit committee are very substantive

1 meetings, and they are information rich. Every
2 bit of the background for every one of those
3 meetings is on the web and available for review
4 to any participant or any citizen. And I think
5 that's useful because, as you know, again,
6 having been in these meetings, we make a point
7 of discussing how we're doing broadly in terms
8 of performance, how we're set up, why our asset
9 allocation makes sense for the environment
10 we're in and the one we foresee going through
11 in the future.

12 And any -- we also commonly will have a
13 focus in each quarterly meeting on a particular
14 asset class, just as we had Townsend our
15 specialty real estate consultant in at the last
16 meeting to review our real estate portfolio,
17 how it's set up, how it's doing, *et cetera*. So
18 there's a terrific amount of information out
19 there in connection with those meetings.

20 Also all of our meetings, including
21 meetings like the one today, are available on
22 the web on the Cabinet's Web site and they're
23 archived. So any citizen can go back at any
24 time and review the discussion of any subject
25 at their leisure.

1 GOVERNOR SCOTT: Do you -- do you have
2 a -- I mean, do you have a recommendation for
3 people that are participants on how often they
4 ought to be looking at the information, and
5 what they ought to be looking at? And do
6 you -- is there anything like it that you're
7 telling people, look, you ought to be looking
8 at this on a monthly basis, and...

9 MR. WILLIAMS: Well, I think it's a
10 question of personal preference. You know,
11 some people have interests and are curious and
12 like to stay involved; others, particularly
13 when news is bad, their view is don't open the
14 statement and you'll sleep better. There are a
15 lot of people who take that --

16 GOVERNOR SCOTT: It's never worked for
17 me.

18 MR. WILLIAMS: I hear you.

19 I would say as a practical matter if one
20 has a real thirst for information, contact us;
21 if you can't find anything that covers your
22 particular question on the web, we are very,
23 very responsive, as I said. I think the
24 thoroughness of the web information
25 availability is perhaps reflected in a fairly

1 small number of inquiries we get from
2 beneficiaries. Keeping in mind that we have a
3 million beneficiaries in aggregate, you might
4 think that we would receive calls in the
5 hundreds or thousands, particularly when there
6 are bad market days. We don't. Ernst & Young,
7 our contract provider for advice, will receive
8 a large number of calls, but the number that
9 come directly to us is actually fairly modest.

10 GOVERNOR SCOTT: All right.

11 MR. WILLIAMS: Thank you.

12 GOVERNOR SCOTT: All right.

13 MR. WILLIAMS: Anything else you'd like to
14 cover?

15 GOVERNOR SCOTT: Commissioner.

16 COMMISSIONER PUTNAM: Not on the SBA so --
17 maybe this has been covered, but just curious
18 if you could address the 10,000, \$11,000 public
19 records request.

20 MR. WILLIAMS: Absolutely. There's been a
21 lot of conversation about the \$10,000. And I
22 think what should be understood about the
23 \$10,000 number is that it's simply a good-faith
24 estimate that's a function of the nature of the
25 records request itself.

1 We recently received a records request
2 that was subsequently expanded that was unique
3 in its breadth, its depth, and the fact that it
4 focused entirely on the small part of the
5 portfolio where everything about it is not
6 otherwise public. That's a completely unique
7 request in the history of the SBA.

8 The same methodology in preparing that
9 good-faith estimate was used for this inquiry,
10 that has been used for every other inquiry in
11 history that I'm aware of. And the number, it
12 seems high at first glance, it's been talked
13 about as if it related to, quote, an
14 investment. That's not true.

15 To understand the number, what you have to
16 understand is it involves multiple actual and
17 potential investments, and the entire diligence
18 and research and oversight process surrounding
19 each.

20 What does that mean. Commonly the level
21 of analysis, research, and due diligence that's
22 done prior to an investment being made by an
23 institution like the SBA is more than a year.
24 It involves not only very extensive work on the
25 part of the staff of the SBA, but it also

1 involves extensive work on the part of external
2 third-party consultants, including investment
3 consultants, lawyers, or potentially other
4 sorts of relevant specialists in the area, and
5 it often involves a great deal of confidential
6 information.

7 The key here is the scale of this. You're
8 talking well into the thousands of documents.
9 We were able to identify on the original
10 request some 6,000 documents that would be
11 involved in a response. And the request was
12 subsequently expanded with an additional 46
13 separate public requests, many of which have
14 numerous components embedded in them. So
15 there's some sort of exponential growth in the
16 scale of the request here. So I think those
17 are the main points.

18 And we have a law that all state agencies
19 operate under including the SBA that we have
20 followed very scrupulously here. The history
21 on these estimates of costs is that if anything
22 we tend to be low on them, number one.

23 Number two, I'm not aware of any history
24 where the SBA has ever given an estimate and
25 exceeded it -- or has given an estimate and

1 subsequently gone back and asked for additional
2 funding. It is very common for these estimates
3 to be low and the costs to exceed the
4 estimates. But acting in good faith, we give
5 the requester the benefit of the doubt and
6 don't seek any additional compensation.

7 Again, the normal scale of costs on
8 requests is vastly smaller than \$10,000, and
9 the reason for that is the normal request is
10 vastly smaller than this request.

11 GOVERNOR SCOTT: Attorney General Bondi.

12 ATTORNEY GENERAL BONDI: And, Ash, thank
13 you for your service, once again. And I know
14 you, as all of us, care about transparency.
15 I've lost sleep over this bill. I think the
16 amount of the bill is indefensible the way it's
17 written. I've dealt with public records in my
18 career, I've given out over 25,000 pages of
19 documents in one of my cases that required
20 extensive redacting. And I know this may
21 involve different exemptions, trade secrets,
22 other issues.

23 But I would ask that the bill be broken
24 down more when we have -- and I know it's an
25 estimate. But 300 hours which is seven-

1 and-a-half weeks of one employee full time, at
2 least seven-and-a-half weeks just to review the
3 documents. And then a supervisor -- and I
4 agree a supervisor has to go over them, that's
5 how we did it. We had three lawyers looking
6 over documents, but we never charged for three
7 lawyers' time. We just wanted to ensure the
8 accuracy of it. And I realize we have to
9 charge, I realize you said we're charging low
10 amounts.

11 But I really am concerned about the way
12 this bill is broken down. And I would ask that
13 it be -- I mean, I think we need to break it
14 down more. I can't comprehend how it's going
15 to take seven-and-a-half weeks for one employee
16 to review this amount of documents. Now, in
17 the very end, you're saying that there'll be
18 approximately 3,000 documents released. And
19 that's an estimate as well, is that right?

20 MR. WILLIAMS: Yes. And let me be clear
21 on something else, because this is really
22 fundamental. The cost here frankly I think is
23 way too much in focus, and I think we can set
24 that issue aside in the following way: we have
25 a very long history at the State Board -- this

1 happened to be a request from a member of the
2 Legislature. We have a very long history of
3 working constructively with Florida's
4 Legislature.

5 And when we've had inquiries from
6 committees of competent jurisdiction, *et*
7 *cetera*, that were official legislative
8 responses -- respond -- inquiries, we have done
9 two things: number one, we've responded very
10 promptly; number two, we have secured an
11 agreement that the same legal obligation we
12 have of protecting certain proprietary
13 information that belongs to private third
14 parties will be honored. And what we have done
15 is provided information under that agreement
16 quickly, unredacted with zero cost. That's the
17 norm in dealing with the Legislature.

18 I'm not aware of any history involving
19 cost to the Legislature. And I understand
20 completely it creates an appearance of cost
21 itself being a barrier. That should not be the
22 case and I couldn't agree with you more.

23 What was very unusual about this
24 circumstance is the nature of it. There are
25 just a lot of things that are different about

1 this in terms of not coming through one of the
2 committees that the SBA works with in the
3 Legislature, with there being potential that
4 information that could end up in other hands,
5 *et cetera*.

6 The senate president obviously received a
7 request yesterday to deal with this issue.
8 I've been in touch with senate staff and will
9 work very constructively as we always have with
10 the Florida Legislature. And it would be my
11 hope we could address this issue with no cost
12 and no delay.

13 And as far as this particular response
14 goes, even if the trustees made a decision that
15 whatever the cost is, \$7,000 or \$70,000, it
16 doesn't matter. If whatever the cost is would
17 not be recovered from the requester of the
18 information, we're still obligated to follow
19 the law which requires the redaction process to
20 take place. And given the scale -- or the
21 inspection of the documents and potential
22 redaction to take place, and the scale of the
23 request is such that it will take time.

24 And that was the other key issue, that it
25 appeared that there was some -- some effort to

1 stretch out the time frame as a barrier to
2 responding. But that's not the case. And
3 again that issue can be dealt with in
4 partnership with legislative leadership by
5 approaching this through a channel similar to
6 what's been done in other cases.

7 ATTORNEY GENERAL BONDI: Or even take the
8 Legislature out of it, back to like the
9 private -- a private request made, my concern
10 again is the amount of the bill and how it's
11 broken down. And I've spoken with Pat Gleason
12 at length about it and we may have some
13 suggestions as well.

14 You know, a lot of these documents can be
15 given in my opinion piecemeal, where there's
16 not a delay. When you can find documents
17 quicker, easier that don't have to be redacted,
18 perhaps those can get off your plate and give
19 those out faster. And maybe if we could get a
20 better breakdown as to -- because the cost is
21 just very -- given my experience over the
22 years, the cost is very troubling to me, this
23 estimate of 300 hours at almost \$7,000. I just
24 don't see that as realistic.

25 So perhaps if you could break that down.

1 And I know you said you give a higher estimate
2 so someone doesn't get stuck with a higher
3 bill, but this just -- for 3,000 pages of
4 documents, and even if it's 6,000 that you have
5 to go through and provide three, that just
6 seems high. So maybe perhaps if you could give
7 us a better breakdown, that would help me
8 better understand --

9 MR. WILLIAMS: We'll be happy to do that.

10 ATTORNEY GENERAL BONDI: -- the process.

11 MR. WILLIAMS: And, again, I want to be
12 very clear, there's no fixation on this
13 number. It was a good-faith estimate following
14 a process that's been used for years. That
15 process has never been challenged, it's never
16 been problematic, and it's never been found to
17 be unreasonable. But I hear you. We're all
18 about transparency and whatever we can do in
19 that regard we will.

20 ATTORNEY GENERAL BONDI: And I think Pat
21 would offer to work with you as well --

22 MR. WILLIAMS: Certainly.

23 ATTORNEY GENERAL BONDI: -- to try to get
24 some of the documents out in a -- at a faster
25 pace too.

1 MR. WILLIAMS: And interestingly on that,
2 that's exactly the approach that we took when
3 we received this original request. It came
4 from a member of the senate. And I contacted
5 the senator by email the day we got the
6 request, followed up personally by phone within
7 a few days, and discussed the approach and the
8 nature of the inquiry.

9 Because it was purely a records request.
10 There were no questions, there were records
11 requests. And I said, I can infer from your
12 records request what you may be focusing on,
13 and what I'd like to do is try and help you.
14 Because rather than put you in a position where
15 because you're restricting your inquiry to a
16 records request, we're going to run into a
17 legal process that takes time and costs money.
18 I'd love to try and find a way to be
19 substantively responsive, thorough, open,
20 truthful, and direct with you without
21 subjecting you to the delay and cost of that
22 legal process. Toward that end -- that was
23 agreed to.

24 And toward that end we pulled together a
25 very detailed timeline that covered a series of

1 events relating to investment over -- an
2 investment over a number of years, that was
3 cross tabbed to documents supporting each
4 section of that time frame that aggregated 230
5 pages. That was delivered promptly, without
6 cost, without any redaction, and I offered to
7 sit down and discuss it and go through it.

8 And instead of there being any uptake on
9 that offer, the follow up was an additional and
10 far broader records request. So we're sort of
11 doing this the hard way, but again it's not my
12 place to make that judgment. My place is to
13 respond. And we will do that and do it in good
14 faith and do it as efficiently as we possibly
15 can.

16 ATTORNEY GENERAL BONDI: Thank you.

17 MR. WILLIAMS: Sure.

18 GOVERNOR SCOTT: Ash, have you had -- have
19 you had requests for similar documents in the
20 last few months?

21 MR. WILLIAMS: Never on this scale, no.

22 GOVERNOR SCOTT: Okay. And not the same
23 documents that Senator Fasano has been asking
24 about.

25 MR. WILLIAMS: No. There was a request

1 for documents relating to this same particular
2 investment. There was the one investment that
3 this started with and it subsequently expanded
4 to many, many investments with actual and
5 potential, as I said earlier.

6 But the original request for information
7 relating to this particular investment came
8 from the *St. Petersburg Times* back when that
9 investment was still in the due diligence and
10 analysis process.

11 And under Florida law, when an investment
12 is under active consideration, it is
13 protected. And there are very good reasons for
14 that. If you think about that, the potential
15 for corruption, or for competitors, competing
16 investment managers misusing the public records
17 law for commercial advantages is significant.

18 So the way the law works, the information
19 relating to any investment becomes public a
20 limited period of time, I think it's 60 days,
21 after the investment is completed, meaning the
22 documents are signed, *et cetera*. So what
23 happened was, the *St. Pete Times* made a request
24 for essentially the same information probably
25 the better part of a year ago.

1 The investment at that point was under
2 consideration, it was protected. We advised
3 the *Times* of that. They never renewed their
4 request, and we subsequently had a request from
5 a different direction; similar information,
6 different direction from the request. All of
7 which is fine.

8 GOVERNOR SCOTT: And who -- how do you
9 audit whether all the requests that you get are
10 getting done properly? Who does that in your
11 office? Is that an individual that --

12 MR. WILLIAMS: When you say audit it
13 separately, we have --

14 GOVERNOR SCOTT: Use somebody that does
15 it.

16 MR. WILLIAMS: -- obviously a general
17 counsel who oversees this area, we also have a
18 full-time paralegal who handles public records
19 requests --

20 GOVERNOR SCOTT: Okay.

21 MR. WILLIAMS: -- and has significant
22 expertise in that area.

23 GOVERNOR SCOTT: Okay. And are you able
24 to stay up with the requests? Do you have so
25 many that it's hard to stay up with them?

1 MR. WILLIAMS: The funny thing is,
2 historically, we have not. We have exactly one
3 source that has accounted for the vast, vast,
4 vast majority of the requests we've received
5 over the past four years. It's a newspaper,
6 it's the same newspaper, and that's the
7 predominant source.

8 GOVERNOR SCOTT: All right. Any
9 questions?

10 CFO ATWATER: Yeah. So what you have
11 shared today, I assume you're sharing with
12 members of the Legislature --

13 MR. WILLIAMS: Absolutely.

14 CFO ATWATER: -- that you have
15 historically and you're willing today to
16 provide all the documents without charge, with
17 no redaction, just with the same understanding
18 and appreciation that there needs to be a
19 confidentiality of the information because it
20 has not been redacted. And that can be done
21 without cost, as quickly as possible, the
22 documents could be made available to any member
23 of the Legislature knowing that they have to
24 understand here's all that you've asked for --
25 because, again, you've -- it's been stated here

1 over and over, this is about transparency, it
2 is about wanting certainly not only the private
3 sector but our legislators to know they have
4 access to this information.

5 So they all understand, would you be
6 saying that they should be clear that if they
7 want to see it, a place can be set aside, the
8 documents can be provided for them to look
9 through anything they wish to look through.

10 MR. WILLIAMS: I would say this very
11 unambiguously: the law is the law and it
12 applies equally to the members of the
13 Legislature as it does to any public employee
14 and any citizen of our state. And to the
15 extent we make documents available, that if
16 they are misused, will create liability that
17 could result in economic loss, potentially
18 material economic loss, to our beneficiaries,
19 the funds we manage on their behalf, our
20 clients, *et cetera*, then we have to have an
21 absolute assurance that the law will be
22 followed by anyone to whom we make available
23 documents, anyone, including members of the
24 Legislature.

25 And what I'm saying is in the past we have

1 been able to do that --

2 CFO ATWATER: Right.

3 MR. WILLIAMS: -- successfully, and I
4 would defer to the legislative leadership to
5 work with us and let's come up with a way to
6 address this problem as practically.

7 As I said earlier, I think it's important
8 to draw a distinction between sharing
9 information, sharing substance, backing it up,
10 being truthful, being open, acting in good
11 faith, and responding to documents requests.
12 And if there's any reason to believe that there
13 is some third party involved in a documents
14 request that for whatever reason is not going
15 to observe the law, then we have to be mindful
16 of that as fiduciaries. We have a legal
17 responsibility here --

18 CFO ATWATER: Right.

19 MR. WILLIAMS: -- that we share.

20 CFO ATWATER: Correct. But as you've
21 said, that has been understood in the past, and
22 legislators have understood they had that
23 responsibility, and they acted under that
24 responsibility, correct?

25 MR. WILLIAMS: That is correct.

1 CFO ATWATER: Okay.

2 MR. WILLIAMS: But the only instance in
3 which I'm aware unredacted documents of that
4 nature were requested, they were specific to a
5 single investment, and even then you're talking
6 about a significant volume of information. We
7 were able to deliver it promptly after --

8 CFO ATWATER: Right.

9 MR. WILLIAMS: -- securing a written
10 binding agreement between the chairman of that
11 particular committee of competent jurisdiction
12 over the SBA and the Board to make sure that
13 legal provision was covered.

14 The current inquiry is of such
15 extraordinary and unique breadth, it's somewhat
16 of a different animal. But in theory I'm in
17 complete agreement with you.

18 CFO ATWATER: Okay. That -- then, you
19 know, I -- I appreciate the clarity of that.
20 But if there -- historically that leadership of
21 the Legislature, a legislator, a chair, a
22 committee member has requested and can receive
23 access to information, if they understand the
24 boundaries, and they have to act within those
25 boundaries once having a chance to have all the

1 time necessary to review the documentation,
2 take it in, and have the opportunity, if they
3 would like to exercise it, the opportunity.

4 I understand what you've offered, and I
5 understand that it has not been acceptable.
6 And so if you're reminding all of us -- and
7 this conversation is public conversation
8 today -- that historically legislators have
9 been able to access the information, have
10 access to information, they've had a
11 responsibility on how to treat that
12 information, what should remain after their
13 full review in confidence, ask questions, I
14 hope that everybody understands that's still
15 available.

16 MR. WILLIAMS: It's all about good faith.

17 CFO ATWATER: And under the law they have
18 to perform and there should be complete
19 transparency, and they have a responsibility to
20 behave under the law once having had a chance
21 to look at the documents. That would be
22 correct.

23 MR. WILLIAMS: I think it is correct.

24 CFO ATWATER: Okay.

25 GOVERNOR SCOTT: Anything else? Okay.

1 All right. Yes, sir.

2 COMMISSIONER PUTNAM: So is that -- is
3 that same option available to anyone if they
4 were to sign this written binding agreement,
5 that nondisclosure agreement --

6 MR. WILLIAMS: I'm --

7 COMMISSIONER PUTNAM: -- or is that a
8 privilege of being in the Legislature?

9 MR. WILLIAMS: Commissioner, I want to be
10 careful about practicing law here. I'm not a
11 lawyer, and I don't want to set precedence that
12 could be inappropriate. And I think -- again,
13 that's why I said, I think this is all about
14 transparency and commitment to transparency and
15 acting in good faith. And I want to work with
16 our counsel, your counsels, *et cetera*, and make
17 sure we're doing the right thing here.

18 What I do not want to do is set up a
19 situation where we can create a circumstance in
20 which we can be buried under public records
21 requests that will quadruple the size of our
22 staff, cause us to do nothing but respond to
23 public records requests, and potentially be
24 rendered uninvestable as a partner for other
25 people on the street.

1 We've never had a problem with this issue
2 before and that reflects I think decades of
3 good faith in dealing with these sorts of
4 issue -- issues, and that good faith is
5 undiminished, it absolutely is present today.

6 So I think rather than try and prescribe
7 hard boundaries for what we're going to do
8 here, what I'd like to do is give you a
9 personal commitment to follow the law, to act
10 in good faith, to do everything we can to be
11 transparent, and work with -- with you to be
12 sure that whatever we do is rational and
13 prudent. We're fiduciaries, we have a duty
14 here, and we got to follow it.

15 COMMISSIONER PUTNAM: Well, I -- I mean, I
16 certainly hear about the transparency aspect
17 but I also hear about people acting responsibly
18 with information. I mean, this happens all the
19 time. You get read into bills a lot more
20 sensitive than where we're investing our
21 pension funds in my previous role.

22 But why don't you share with us what the
23 potential exposure to the State of Florida or
24 the pensioners of Florida would be if someone
25 were to act irresponsibly with whatever this

1 information is. Give people a sense of what
2 the potential consequences --

3 MR. WILLIAMS: Sure. All right. Well,
4 let's take an example. It's a hypothetical.
5 It's definitely hypothetical almost in the
6 extreme absurd, but it's a good one. Let's say
7 you own a share of Coca-Cola, publicly traded,
8 can buy it and sell it with a phone call, it's
9 priced everyday. That -- owning that share
10 will entitle you to receive quarterly reports
11 from Coca-Cola, you can go on the web, you can
12 read analysis from a range of different
13 analysts, and you can do with that information
14 what you see fit.

15 If you actually through some other
16 structure -- if Coca-Cola were a private
17 company, and you owned most or a material part
18 of it, you would have access potentially to all
19 sorts of internal financial information,
20 competitive information, maybe even the secret
21 recipe for coke syrup itself. Who knows.

22 And if someone said because we were the
23 person with that investment, give us the secret
24 sauce recipe, and we did so, arguably we would
25 harm the value of the Coke franchise, we would

1 harm other investors, we would harm the value
2 of our own investment, and in so doing create
3 liability from every one of those angles which
4 in turn could come back to haunt us. That's an
5 example.

6 COMMISSIONER PUTNAM: You were right, that
7 wasn't a very good example. Give me a better
8 one.

9 MR. WILLIAMS: Well, I hesitate to
10 speculate --

11 GOVERNOR SCOTT: This is like a debate.

12 MR. WILLIAMS: Pardon?

13 GOVERNOR SCOTT: This is like a debate.

14 MR. WILLIAMS: What you'll find
15 attractive, Commissioner --

16 COMMISSIONER PUTNAM: I mean, seriously,
17 it's \$125 million investment. What is -- what
18 are the consequences if someone were to act
19 irresponsibly with the information? That's all
20 I want to know.

21 MR. WILLIAMS: Well, first of all, I want
22 to be very clear, the breadth of this request
23 is not \$125 million investment. It is many,
24 many existing and potential investments, number
25 one; and it is many, many advisory firms that

1 have been involved in those decisions, any one
2 of which has proprietary information.

3 Let me give you a different example. One
4 of the ways that you source investments -- and
5 this one is a great example -- is you go to one
6 of the big national or international financial
7 advisory firms, all right, take Wilshire
8 Associates as an example which happens to be
9 germane here.

10 One of the services that they sell is that
11 they maintain a proprietary database of
12 investment managers that they have researched,
13 that they maintain oversight on, they know
14 their strategies, they know their performance,
15 they know their financials, they know the
16 individuals, and they have an extremely deep
17 knowledge there. You pay them for access to
18 that database and their recommendations
19 relating to particular managers.

20 So for example the way this particular
21 investment was sourced back in 2007 was that
22 the State Board had an interest in investing in
23 a certain area. They went to the consulting
24 firm and said, we're interested in this kind of
25 a strategy, could you give us a broad list of

1 managers. The firm did. And this manager was
2 included.

3 SBA studied that list for a while, figured
4 out that some of those managers did part of
5 what the SBA was interested in doing, others
6 did a pure version. The SBA went back to that
7 consulting firm and said, give us the list of
8 just the pure -- pure players in this area.
9 The firm acquiesced. Then they worked with the
10 firm to get a recommendation for a short list,
11 *et cetera*.

12 At every step of that way, of that
13 process, proprietary information of that
14 consulting firm was used. That proprietary
15 information will appear in the due diligence
16 files of the SBA. And if you take all that
17 information and make it public, you are in
18 effect again taking the product that is
19 proprietary to that firm not otherwise publicly
20 available, may be trade secret, *et cetera*, and
21 making it public. There is a very good chance
22 that will cause economic detriment not only to
23 that firm but to others related to that firm.

24 GOVERNOR SCOTT: Does it violate a
25 confidentially agreement with that firm?

1 ATTORNEY GENERAL BONDI: Yes.

2 MR. WILLIAMS: It could. That's a great
3 question, Governor. Because when you make
4 investments, part of what you do is incorporate
5 the current law into the investment agreement.
6 So Florida's laws, Florida's statutory laws
7 would be part of our agreements.

8 The other thing is, notwithstanding the
9 very limited exemption from the public records
10 law, one of 500 plus that I understand exists
11 that the State Board has, there is case law on
12 this, a case called *Seapro vs. Department of*
13 *Environmental Protection* I believe it is, which
14 is binding on all state agencies whether or not
15 they have an exemption. And the existence of
16 the *Seapro* case law, as I understand it from
17 our lawyers, would put us in the position of
18 having to go through this redaction -- this
19 evaluation for potential redaction of all the
20 records involved, whether or not we even had
21 any limited exemption to public records law.

22 But understand this records law was
23 adopted in 2006 originally. It was -- and
24 prior to being adopted the State Board worked
25 with the First Amendment Foundation, and worked

1 with the Legislature, it was adopted by the
2 Legislature, signed into law by the Governor at
3 the time.

4 It was subject to sunset review during the
5 2011 session. We again worked with the First
6 Amendment Foundation, made recommendations for
7 a few things to narrow the exemption and
8 increase transparency. It went through a
9 completely different Legislature, was passed
10 overwhelmingly. I believe there might have
11 been two negative votes out of 160. And was
12 signed into law by yet another Florida
13 Governor.

14 So there is a reason the law is there.
15 There is -- the law contains a specific
16 provision that provides a process through which
17 any requester of information is unsatisfied can
18 seek redress. That process has never been
19 triggered. Well, why is that. It's because
20 we've never had a problem providing people what
21 they want under that law.

22 And the other thing that's very clear is
23 there are explicit standards, and they're the
24 ones I just outlined in that law that any
25 private holder of information that's subject to

1 redaction must follow prior to redacting
2 anything. If they redact something outside
3 meeting the standards in the statute, they're
4 subject to penalties of perjury.

5 I'm not aware of any other exemption to
6 the Public Records Act that carries that steep
7 penalty with it. So the Legislature in its
8 wisdom in framing this took it very seriously.
9 That's why the First Amendment Foundation has
10 been constructive on it over a number of years.

11 GOVERNOR SCOTT: All right. Thank you.
12 Attorney General Bondi.

13 ATTORNEY GENERAL BONDI: Commissioner, I
14 think to try to answer your question, under the
15 law a legislator may view confidential
16 information, the key word is it's
17 confidential. Legally a member of the public
18 does not have that authority, therefore, the
19 records must be redacted.

20 GOVERNOR SCOTT: All right. Any other
21 questions? All right. Thank you, Ash.

22 MR. WILLIAMS: Thank you.

23
24
25

1 (Agenda items commenced at 10:07 a.m.)

2 GOVERNOR SCOTT: All right. The first
3 agenda is the Department of Veterans' Affairs
4 presented by Colonel Mike Prendergast.

5 COL. PRENDERGAST: Good morning, Governor,
6 members of the Cabinet. Thank you all for your
7 tireless support to Florida's 1,650,000
8 veterans and their family members. It's truly
9 priceless and it means a great deal to those
10 family members out there across our state.

11 The Florida Department of Veterans'
12 Affairs has three agenda items this morning.
13 At this time we request withdrawal of these
14 items and look forward to bringing them back as
15 part of a comprehensive overview of the
16 department next month.

17 GOVERNOR SCOTT: All right. Is there a
18 motion to withdraw items 1, 2, and 3?

19 COMMISSIONER PUTNAM: So moved.

20 GOVERNOR SCOTT: Is there a second?

21 CFO ATWATER: Second.

22 GOVERNOR SCOTT: Moved and seconded. Show
23 the items withdrawn without objection. Thank
24 you very much.

25 COL. PRENDERGAST: Thank you.

1 GOVERNOR SCOTT: The next agenda is
2 Administration Commission by --

3 MR. MILLER: Phillip Miller.

4 GOVERNOR SCOTT: Good morning.

5 MR. MILLER: Good morning, Governor and
6 members of the Commission. We have two items
7 on today's agenda. Item 1 is approval of the
8 minutes of the August 2nd and August 16th
9 meetings.

10 GOVERNOR SCOTT: Is there a motion on item
11 1?

12 ATTORNEY GENERAL BONDI: Move to approve.

13 GOVERNOR SCOTT: Is there a second?

14 COMMISSIONER PUTNAM: Second.

15 GOVERNOR SCOTT: Moved and seconded. Show
16 item 1 approved without objection.

17 MR. MILLER: Thank you. Item 2 is
18 consideration of a draft final order of
19 dismissal in the proceeding of *Katie Pierola*
20 *and Greg Geraldson vs. Manatee County and the*
21 *Department of Community Affairs and Robinson*
22 *Farms, Inc., and Bochi Properties, L.L.C.*

23 This item relates to a recommended order
24 in a challenge of a comprehensive plan
25 amendment adopted by Manatee County in 2010.

1 The parties in the proceeding are Katie Pierola
2 and Greg Geraldson, they're the petitioners and
3 challengers of the plan amendment.

4 The respondents, Manatee County and the
5 Department of Community Affairs, which is now
6 the Department of Economic Opportunity, and
7 Robinson Farms, Inc., and Bochi Properties,
8 L.L.C., the intervenors and the applicant
9 seeking the land use map amendment.

10 As general background on the proceeding,
11 Robinson Farms and Bochi Properties applied for
12 a future land use map amendment in 2009 seeking
13 to change the land use on 28 acres of land in
14 Manatee County from residential 1 to
15 residential 3. In 2010 Manatee County approved
16 comprehensive plan amendment PA-10-02
17 authorizing the land use change by adoption of
18 ordinance number 10-02.

19 The Department of Community Affairs
20 reviewed the plan amendment and issued a notice
21 of intent to find it in compliance. The
22 petitioners Katie Pierola and Greg Geraldson
23 challenged the land use amendment and the
24 challenge was forwarded to the Division of
25 Administrative Hearings. An administrative

1 hearing was conducted and the administrative
2 law judge determined that the future land use
3 map amendment was not in compliance.

4 The judge's recommended order was
5 originally forwarded to the Department of
6 Community Affairs. Because of procedural
7 changes passed by the Legislature last session,
8 the recommended order was later transmitted to
9 the Commission for final action.

10 After the Commission received the
11 recommended order and hearing record, Manatee
12 County notified the Commission that the county
13 had adopted an ordinance on August 23rd, 2011,
14 that rescinded comprehensive plan amendment
15 PA-10-02. In response the petitioners filed a
16 motion to dismiss the proceeding due to
17 mootness. The intervenors, Robinson Farms and
18 Bochi Properties filed a response opposing the
19 motion and also notice of supplemental
20 authority and argument.

21 The proceedings is before the Commission
22 for final action through these filings. The
23 Commission's legal counsel Mary Thomas will
24 present a legal analysis of the recent filings
25 and the impact of the action taken by Manatee

1 County to rescind the comprehensive plan
2 amendment at issue.

3 GOVERNOR SCOTT: Good morning.

4 MS. THOMAS: Good morning. The
5 Commission's authority in regard to
6 comprehensive plan amendment challenges is
7 limited to determining whether a local
8 government's adopted comprehensive plan
9 amendment is in compliance with certain
10 provisions of chapter 163 and the appropriate
11 strategic regional policy plan. Because the
12 county rescinded the amendment at issue, there
13 is no adopted comprehensive plan amendment for
14 the Commission to determine the compliance of,
15 therefore, this proceeding is moot.

16 Ample case law and final orders provide
17 that if a legislative act is challenged and
18 such act is subsequently rescinded by the
19 legislative body, the proceeding challenging
20 that act is rendered moot. For example, the
21 Florida Supreme Court has held that a
22 proceeding in which the appellants challenged a
23 lower court's determination regarding the
24 constitutionality of a statute was moot because
25 the Legislature repealed the statute at issue.

1 The case was moot because there was no statute
2 for the court to determine the
3 constitutionality of as the statute had been
4 repealed.

5 The intervenors argue that the county's
6 rescission of the amendment is contrary to
7 chapter 163 which provides that local
8 government shall follow the expedited review
9 process in regard to comprehensive plan
10 amendments and that chapter 163.3184 is the
11 sole proceeding for determining the compliance
12 of a comprehensive plan amendment.

13 The intervenors' argument is not within
14 the jurisdiction of the Commission under
15 chapter 163. Chapter 163 limits the Commission
16 to determining whether an amendment is in
17 compliance, therefore, issues such as the
18 validity of the rescission ordinance are not
19 properly brought in a chapter 163 proceeding.
20 Such issues are properly raised in a circuit
21 court proceeding.

22 The Commission cannot address the merits
23 of the actual project sought to be developed
24 under the original comprehensive plan amendment
25 as that amendment is not before us because it

1 has been rescinded.

2 Because the county has rescinded the
3 ordinance at issue and because it is not within
4 the Commission's authority to consider the
5 validity of the recission ordinance, there is
6 no adopted comprehensive plan amendment
7 presently before the Commission, therefore,
8 there is no amendment for the Commission to
9 determine the compliance of. Thus, the
10 Commission should grant the petitioners' motion
11 to dismiss and deny all contrary motions.

12 GOVERNOR SCOTT: Mary, so basically what
13 you're saying is we don't have any authority.

14 MS. THOMAS: No, we don't.

15 ATTORNEY GENERAL BONDI: Thank you for
16 summarizing that.

17 MR. MILLER: We have a number of speakers
18 today. The speakers will have a shared
19 allocation of 10 minutes per side. The
20 petitioners and respondents will share the
21 first 10 minutes in support of the draft of the
22 final order. First we have Mr. Tom Reese
23 representing the petitioners.

24 GOVERNOR SCOTT: Wait a second. Did
25 anybody have any questions for Mary? Good

1 morning.

2 MR. REESE: Good morning, Governor Scott,
3 members of the Administration Commission with
4 its hat on. I'm Thomas W. Reese. I'm the
5 attorney for Katie Pierola and Greg Geraldson.

6 Just a little background: Katie is a
7 longtime resident of Manatee County, used to be
8 the Mayor of the City of Bradenton Beach.
9 She's 80 years old and that's one of the
10 reasons she's not here today. She would have
11 liked to have been here. Greg is actually a
12 farmer and he is at work.

13 We were able to go in front of
14 Administrative Law Judge Don Alexander and
15 convince him that the amendment was not in
16 compliance on the fairly debatable standard.
17 Manatee County then repealed it, so that is the
18 reason we filed the motion. And my experience
19 in doing growth management cases has been that
20 if local government repeals the amendment that
21 is the subject of litigation, the jurisdiction
22 disappears. Because that is solely the
23 jurisdiction. So that's the explanation why we
24 filed it.

25 So your question to Mary Thomas was, you

1 know, very precise, it is there is no
2 jurisdiction. So that's why we filed it. And
3 I'm here to answer any questions. It's always
4 an honor to appear before the Governor and
5 Cabinet.

6 GOVERNOR SCOTT: Thank you. Does anybody
7 have any questions?

8 ATTORNEY GENERAL BONDI: No.

9 GOVERNOR SCOTT: Thank you.

10 MR. MILLER: Next we have Jim Minix,
11 deputy -- Chief Deputy County Attorney
12 representing respondent Manatee County.

13 MR. MINIX: Governor Scott, members of the
14 Cabinet: my name is Jim Minix. I'm with the
15 Manatee County Attorney's Office. I would just
16 like to say that we do concur in the analysis
17 given by counsel for you. We do believe that
18 at this point the county did have the authority
19 to rescind its earlier ordinance on the comp
20 plan amendment.

21 I would just point out that one of the
22 authorities that they talked about is that
23 there's a preemption involved in chapter 163,
24 and the law states that it's preempted if the
25 local action, quote, frustrates the purpose of

1 the state statute. And it's our contention
2 that nothing the county did frustrates the
3 purpose of the Legislature when it enacted
4 chapter 163.

5 The Legislature gave a certain way or
6 methodology that comp plan amendments should
7 go, but it said nothing in the statute
8 regarding whether a county could say at some
9 point we don't want to amend any more. We want
10 to rescind our earlier action. We've read the
11 very well-reasoned recommended order by the
12 administrative law judge and we want to
13 basically correct a mistake we made earlier.

14 So for that reason we would simply say
15 that we concur with the lack of jurisdiction
16 here. We would ask you to let Manatee County
17 basically make its own decision regarding its
18 own comp plan. Thank you. Do I have any
19 questions? Yes, Commissioner.

20 COMMISSIONER PUTNAM: Just for context,
21 Manatee County was supportive of the land use
22 change and later reversed themselves. Do you
23 have some context for what happened between
24 that period of time? Was it -- did you reverse
25 it in reaction to the administrative law

1 judge's decision or -- what were the
2 circumstances that supported the land use
3 change that then changed?

4 MR. MINIX: What happened was,
5 Commissioner, that originally on a very close
6 vote the county Commission agreed with the
7 developer to enact the comp plan and add some
8 density to that particular parcel. We then
9 went to an administrative proceeding, an
10 administrative law proceeding based on
11 Ms. Pierola and her attorney who were
12 contesting that. At the administrative law
13 proceeding we were united with the developer
14 because that was what the majority of the board
15 had voted on.

16 After we got the administrative law
17 judge's recommended order, there was an issue
18 as to what was the most recent data and how was
19 that presented. And there was a reasonable
20 argument either way that the most reasonable
21 data was the data that was incorporated in our
22 comprehensive plan already, or was it the most
23 recent data that was available through other
24 sources that we had and knew and were using for
25 our emergency management activity in hurricane

1 evacuation.

2 So as a result of getting the
3 administrative law's order, the board then had
4 a new vote to rescind it. So that came after
5 the administrative law recommended order. And
6 I believe that recommended order was pretty
7 persuasive to the board of county
8 commissioners, although I can't speak for each
9 commissioner.

10 GOVERNOR SCOTT: Did the board change?

11 MR. MINIX: The board did change
12 politically.

13 GOVERNOR SCOTT: The board members changed
14 also, right?

15 MR. MINIX: There were two new board
16 members, yes, sir. If there are no further
17 questions, that concludes my presentation.

18 GOVERNOR SCOTT: Any questions? Okay.
19 Thank you.

20 MR. MILLER: And our final speaker on
21 the -- in support of the draft final order is
22 Sarah Schenk, Deputy County Attorney.

23 MS. SCHENK: We waive.

24 MR. MILLER: The next speaker is
25 Mr. John Neal, an applicant in the case, who

1 will have 10 minutes in opposition to the draft
2 final order.

3 MR. NEAL: Hello, Governor, Commissioners,
4 I'm very happy to be here today. Actually I
5 was going to let my lawyer speak for me, but
6 with all due respect, he's actually given oral
7 argument on this before, and we've made
8 testimony, and I just thought it would be
9 better for me, intervenor, I am the intervenor,
10 to represent myself in this matter, because
11 what we're talking about is something that you
12 don't have to be a lawyer to understand.

13 I basically defended the DCA and the --
14 Manatee County throughout this whole process,
15 54 months of process, process, process, to get
16 to a point where I could speak with you to
17 protect that process.

18 A few months ago Manatee County rescinded,
19 reversed, redid their ruling, and I sort of
20 think it's peculiar, how does a party in a --
21 in an action, litigation really just decide
22 that it's over. How can one party change their
23 minds and decide that it's over?

24 And it just doesn't seem right to me. I'm
25 not an attorney. But if that's a defense, if

1 that's a defense against law, I'm surprised
2 that it's not practiced more often; that is, a
3 defendant in a case decides that he or she no
4 longer wants to be a party to this case, so
5 they just rescind the action and then it's no
6 longer -- it's moot I guess is the legal term.

7 So I'm sort of in disagreement with
8 Ms. Thomas and with Manatee County. But I'm
9 sort of listening with both ears, two ears and
10 one mouth, you know, and I'm going to follow
11 sort of the advice of Ms. Thomas and ask that
12 this Commission continue this matter for
13 another meeting while we have a judge give a
14 briefing on the matter of jurisdiction.
15 Because I think ultimately you'll find that you
16 do have jurisdiction in this matter.

17 Because while the statute 163 doesn't
18 expressly give permission to reverse a
19 decision, it does say there's a process that
20 ends in the final determination by your
21 Commission. So I'd like to go back to a judge,
22 because what you've really heard are two
23 opposing attorneys say -- or three opposing
24 attorneys say that this is moot, but you have
25 us on the other side -- and I'd like a judge to

1 decide -- or a circuit court, as I think
2 Ms. Thomas said -- to decide what's right, and
3 then I'd like to come back on -- on the matters
4 so we can talk about the substantive matters.

5 Some of you may know I'm the largest
6 general contractor in Manatee County. I build
7 lots of homes, I create lots of jobs, and I
8 take that responsibility fully. I think a lot
9 of manufacturers in my county have given up
10 because the process is so long, but I'm not one
11 to give up. I'd like to have an opportunity to
12 reach a process that I've been in for 54
13 months. And if jurisdiction is the question,
14 well, let's get the question answered. I'm here
15 for questions and rebuttal if you have them.

16 GOVERNOR SCOTT: Does anybody have any
17 questions?

18 COMMISSIONER PUTNAM: Just to explore the
19 options, but go ahead, Governor.

20 GOVERNOR SCOTT: Mary, can you come back
21 up for a second?

22 MS. THOMAS: Sure. My notes.

23 GOVERNOR SCOTT: To make sure I understand
24 the process. So right now -- so John Neal
25 needs to go to the circuit court to do what?

1 MS. THOMAS: If he wants to challenge the
2 validity of the local government's rescission
3 ordinance.

4 GOVERNOR SCOTT: That's going to be over
5 whether they could rescind or not.

6 MS. THOMAS: Yes.

7 GOVERNOR SCOTT: Okay. And so -- and when
8 will that happen? So you already filed -- has
9 that been filed?

10 MR. NEAL: That's to me. I can speak in
11 the mike. It has been -- it has not been
12 filed. It's probably been written though --

13 GOVERNOR SCOTT: Okay.

14 MR. NEAL: -- and could be filed within a
15 few days. And I think that we could get a
16 quick response based on the time frame of this
17 proceeding.

18 GOVERNOR SCOTT: Okay. And is there a
19 reason you haven't filed? There's no -- and
20 there's no time limits on this.

21 MR. NEAL: I don't know. Mrs. Thomas
22 could answer that. I think the reason we
23 haven't filed is with respect to this
24 Commission, and we just --

25 GOVERNOR SCOTT: All right. So the -- and

1 they're going to make a decision, the circuit
2 court will make a decision. How long?

3 MS. THOMAS: They will decide if the
4 ordinance was valid or not. I guess if the
5 ordinance is not valid, then -- or depending on
6 their decision, if they decide that it was
7 valid, then it would come back for us for the
8 same, you know, our suggestion of mootness.
9 And if it was not valid, then I guess we would
10 consider the validity of the ALJ's recommended
11 order.

12 GOVERNOR SCOTT: Okay.

13 MS. THOMAS: But we also -- since the
14 Administration Commission has had this issue,
15 the intervenors have had the opportunity to
16 file their action in circuit court and they've
17 just not done so yet.

18 GOVERNOR SCOTT: Okay. And do we know the
19 time frame -- or do we know the time frame for
20 how long the circuit court takes to do
21 something like this?

22 MS. THOMAS: I don't know. I guess it
23 just depends on the court's docket.

24 MR. MINIX: Yes, Governor, I think I could
25 add some enlightenment to that. Jim Minix

1 again. Just to answer your question, they have
2 several options here: one option would be
3 based on a final order from the Administrative
4 Commission, they would then be able to take an
5 appeal of that to the district court of
6 appeal. That's one option.

7 The second option that they've had, and
8 they've had it all along throughout the entire
9 proceeding, is they could file a declaratory
10 judgment action in the local circuit court.
11 That would operate as a normal civil case.

12 GOVERNOR SCOTT: And that's what you're
13 talking about, it would be a declaratory
14 judgment of whether you had the right to
15 rescind or not.

16 MR. MINIX: That's correct. And a judge
17 would decide that --

18 GOVERNOR SCOTT: Yes or no.

19 MR. MINIX: -- a circuit judge, yes or
20 no. It may take as long as six months,
21 possibly longer. And then the circuit judge
22 opinions could be appealed to the Second
23 District Court of Appeal. So those are the
24 legal options that are currently available as I
25 understand it.

1 GOVERNOR SCOTT: Okay. All right. So our
2 choice today is we can say that we're -- you
3 know, we're not going to -- we're going to pass
4 on this because of mootness, that's one
5 choice. Is that right, Mary?

6 MS. THOMAS: If we put the matter into
7 abeyance, you know, ultimately the issue will
8 still come before us after the circuit court
9 has made its decision.

10 GOVERNOR SCOTT: So there's nothing -- so
11 if we say -- we say, we're going to -- I guess,
12 we're going to vote against this, then they can
13 still come back.

14 MS. THOMAS: Yes. And I think it would
15 take a member of the Cabinet to move for the
16 abeyance.

17 CFO ATWATER: Could I just understand
18 something?

19 GOVERNOR SCOTT: Yes.

20 CFO ATWATER: Thank you. And it is -- I
21 would apologize for not grasping it all the
22 first time through. So if we were to just say
23 we want to set this aside and not exercise it
24 as an agenda item today --

25 GOVERNOR SCOTT: Just don't make a --

1 CFO ATWATER: -- just don't make a
2 decision, it allows the party that has
3 invested -- let me just say I take it a
4 significant amount of time and resources,
5 thinking that they had a partnership working
6 along towards a certain goal -- that they would
7 have the chance to play that out with a case in
8 front of a court.

9 MS. THOMAS: Yes --

10 CFO ATWATER: And --

11 MS. THOMAS: -- if they were to file such
12 an action.

13 CFO ATWATER: If they were choosing to
14 file such an action.

15 MS. THOMAS: Yes.

16 CFO ATWATER: And then we could have the
17 benefit of that court's opinion as to how --
18 did this thing follow through properly, and put
19 us right back -- it could put us right back
20 here, you're saying it would put us right back
21 here --

22 MS. THOMAS: Yes.

23 CFO ATWATER: -- at some point. But we
24 would have the benefit of that court saying the
25 Cabinet truly does not have authority, that

1 these decisions were all made appropriate to
2 law as they interpret it --

3 MS. THOMAS: Yes.

4 CFO ATWATER: -- and at least an
5 entrepreneur, a risk taker, could have had
6 their chance to proceed down that path and find
7 out if that's exactly what the law meant or did
8 not mean.

9 MS. THOMAS: Correct.

10 CFO ATWATER: Okay.

11 GOVERNOR SCOTT: Okay. But let's just
12 finish that just for a second. So just let's
13 say that we say we're not going to take this up
14 again. We decide today we're not -- we're
15 going to listen to your initial advice, and say
16 it's moot, we're not doing it. Don't they have
17 the same right?

18 MS. THOMAS: Yeah. They have the
19 opportunity to appeal to an appellate court,
20 our decision, and then they could challenge --
21 they could, you know, have the court decide
22 whether our decision to render the case moot
23 was actually a correct decision or not. So
24 they would actually get to litigate that
25 mootness issue as well.

1 GOVERNOR SCOTT: Okay. So, John, are you
2 going to -- if we put this in abeyance, are you
3 filing a suit, are you going to file in the
4 circuit court?

5 MR. NEAL: As what the attorneys behind
6 you are giving you are legal reasons, as I'm
7 the filer of the suit, I would say that my
8 problem has really been that we've given two
9 oral arguments, one exception to the ALJ's
10 order, and most recently another written
11 report, but it's never been responded to. So
12 we've been hoping that we were going to get a
13 legal response so that we would know if we had
14 a case or not.

15 Now, I think we definitely have a case
16 because I think that due process has been
17 violated and that's my -- and that's my
18 position. So we've been waiting for practical
19 reasons and I knew that we were --

20 GOVERNOR SCOTT: It cost money.

21 MR. NEAL: I knew that we were coming
22 here.

23 GOVERNOR SCOTT: Yeah.

24 MR. NEAL: So the answer is: I would like
25 to abate it and finish the process, have a

1 judge determine --

2 GOVERNOR SCOTT: If we do pass today, and
3 don't do anything, you're filing.

4 MR. NEAL: Yes.

5 GOVERNOR SCOTT: Okay. So, Mary, if
6 that -- if we make the decision that we're
7 going to not make a decision, the way I would
8 think I would do it is I'd say, okay, so we're
9 not going to make a decision as long as a suit
10 is filed within -- how many days, John? Ten
11 days.

12 MR. NEAL: Could I ask for two weeks? Two
13 weeks.

14 GOVERNOR SCOTT: Okay. So let's do 20
15 days -- I'm sorry. Okay. Let me finish this
16 first, and then you guys tell me why it doesn't
17 work. Okay.

18 Let's say that we're going to -- we're not
19 going to make a decision today, because you're
20 going to file a suit in 20 days, and then you
21 go to circuit, you're going to decide whether
22 they had the right to rescind their order or
23 not. That deals with the mootness issue,
24 right, Mary?

25 MS. THOMAS: Yes.

1 GOVERNOR SCOTT: Okay. And then if you
2 don't file, then part of my motion would be
3 that we, I guess, what, approve final order --
4 or no, we said we couldn't take it up because
5 it was moot.

6 MS. THOMAS: Yes.

7 GOVERNOR SCOTT: Okay.

8 MS. THOMAS: And I just wanted to say that
9 from, you know, when this was initially -- this
10 initially came to us, we did make a legal
11 decision and it's been known for some time that
12 the legal decision was that the proceeding was
13 moot. And so we had no authority to even
14 consider the validity of the ordinance.

15 GOVERNOR SCOTT: Right.

16 MS. THOMAS: So we did make a legal
17 decision.

18 GOVERNOR SCOTT: Great. So that's -- so
19 if it's okay with you, that's the order that I
20 would -- or the motion I would make. And then
21 I'd like you guys to tell me why that doesn't
22 make sense.

23 MR. REESE: Well, I'm not suggesting that
24 you're wrong, Governor --

25 GOVERNOR SCOTT: That's okay. It doesn't

1 bother -- you're not going to hurt my
2 feelings.

3 MR. REESE: I'm simply saying if I could
4 supplement a bit of information I don't think
5 you've received, which is, if you go ahead and
6 file this order today, the dismissal, they
7 can -- and they file their declaratory judgment
8 action, the judge, if he agrees with them on
9 the law and against us on the law, can
10 rescind -- basically he can overturn the
11 county's decision right then and there
12 regardless of what you do. That judge has that
13 opportunity, can say that the county basically
14 didn't follow the law correctly.

15 And then it could -- the judge himself
16 with no help from you could basically overturn
17 that and then of course the county would appeal
18 and we'd find out from an appellate court. So
19 it really doesn't matter in a sense that you
20 can go ahead and do this order now, and then
21 they can go and file and get their relief and
22 they could still get relief from the circuit
23 court.

24 GOVERNOR SCOTT: Mary, does that -- does
25 the motion that I made put John Neal in a

1 better or worse position? Is it --

2 MS. THOMAS: I think really it's the same
3 position because, you know, he still can
4 challenge the mootness if he appeals. If we
5 enter this final order today recommending, you
6 know, dismissal because of mootness, he can
7 still go to the circuit court and he'll be
8 appealing exactly that issue. So either if he
9 does it -- if we put it in abeyance, and he
10 does it in circuit court, or if he appeals the
11 final order, it's still appealing the mootness
12 decision.

13 GOVERNOR SCOTT: Okay. Do you have a
14 preference, John?

15 MR. NEAL: Yes. Excuse me. With all due
16 respect, if you deny the motion, then I would
17 rather bring the action where the action
18 started at the county level as opposed to at
19 the state level in front of this body. Who I
20 respect but --

21 GOVERNOR SCOTT: So you'd rather us just
22 to --

23 MR. NEAL: I'd rather have you abate it,
24 please.

25 GOVERNOR SCOTT: Okay. All right. Okay.

1 I'm sorry, go ahead.

2 MR. REESE: Tom Reese representing Katie
3 and Greg. I think the issue you really need to
4 look at here is your jurisdiction is under
5 163.3184. Your sole jurisdiction is whether
6 the Manatee County plan amendment is in
7 compliance with the Growth Management Act.
8 There is no such plan in front of you, it's
9 been rescinded. You do not have the authority
10 to determine whether they have the authority to
11 rescind it, you have no jurisdiction to do
12 anything today other than to say you don't have
13 jurisdiction. When you don't have
14 jurisdiction, you can't get into other issues.

15 GOVERNOR SCOTT: I'm fine. I understand.

16 MR. REESE: And they knew -- well, first
17 of all, they raised the issue back in August
18 23rd to Manatee County that the county didn't
19 have jurisdiction. They could have filed a
20 suit before then, they could have filed a suit
21 anytime since August 23rd; they haven't.

22 GOVERNOR SCOTT: I understand.

23 MR. REESE: Katie is 80 years old. You
24 know, she'd like to see this be resolved.

25 GOVERNOR SCOTT: I understand. Thank

1 you. All right. So, Mary, just to make sure
2 we're going to say this properly. So what
3 we're going to do is my motion is going to be
4 we're going to put this in abeyance, okay, with
5 John Neal agreeing that he's going to file a
6 case within 20 days in a circuit court to
7 question the validity of the rescinding their
8 prior order. If he doesn't do that within 20
9 days, then we will have -- our decision would
10 have been to not make a decision because of the
11 mootness.

12 MS. THOMAS: Okay.

13 GOVERNOR SCOTT: Does that make sense?

14 MS. THOMAS: Yes.

15 GOVERNOR SCOTT: Okay. Is everybody all
16 right with that? Okay.

17 ATTORNEY GENERAL BONDI: Fine.

18 GOVERNOR SCOTT: Thank you very much.

19 That concludes the Cabinet meeting. Thank you
20 very much. We are adjourned.

21 (Governor and Cabinet meeting concluded at
22 10:36 a.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA:
COUNTY OF LEON:

I, CAROLYN L. RANKINE, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 71 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS _____ day of October, 2011.

CAROLYN L. RANKINE
2894-A Remington Green Lane
Tallahassee, Florida 32308
850.878.2221