

WALK ON #1

PLA

Lee County Board Of County Commissioners  
Agenda Item Summary

Blue Sheet No. 20050455

1. ACTION REQUESTED/PURPOSE: Provide direction to County staff with respect to options for the construction of the "Alico 3" Seminole Gulf Railway ("SGLR") Crossings as part of the Lee County Alico Road Widening Project.

2. WHAT ACTION ACCOMPLISHES: Provides direction to staff for proceeding with the "Alico 3" SGLR Crossings associated with the Alico Road Widening Project.

3. MANAGEMENT RECOMMENDATION: Withdraw the "Petition for Review" of the Surface Transportation Board decision of November 17, 2004 and enter into discussions with the Seminole Gulf Railway for completion of the "Alico 3" Crossings on Alico Road.

4. Departmental Category: Public Works

5. Meeting Date: 04-05-2005

6. Agenda: Consent Administrative Appeals Public X Walk-On

7. Requirement/Purpose: (specify) Statute Ordinance Admin. Code X Other

8. Request Initiated: Commissioner Department Public Works; County Attorney Division By: Jim Lavender, David M. Owen

9. Background: As part of the widening of Alico Road, there are several railroad crossings required from the Seminole Gulf Railway ("SGLR"). In November, 2004, the County received an Adverse Ruling from the Surface Transportation Board on the County's request for the abandonment of the SGLR Baker Spur. Subsequent to the unfavorable decision by the Surface Transportation Board, on January 13, 2005, the County filed an appeal of that decision ("Petition for Review") to the U.S. Court of Appeals, District of Columbia Circuit, in order to preserve the County's rights in the case. Since that time, County staff has made several attempts to negotiate costs and construction responsibilities for widening the Spur line crossings for the Alico Road widening Project. However, SGLR continues to refuse to negotiate with the County to widen the crossing until our appeal to the Surface Transportation Board is withdrawn.

At this time, there appear to be two (2) possible options to take in this matter. Under the first option, the County would immediately put SGLR on notice that we intend to improve the crossings under the terms of our 1988 Easement Agreement. In which event, SGLR may pursue an injunction to prevent the County from doing

(BACKGROUND CONTINUED - NEXT PAGE)

10. Review for Scheduling:

Table with columns: Department Director, Purchasing or Contracts, Human Resources, Other, County Attorney, Budget Services (Analyst, Risk, Grants, Mgr.), County Manager/P.W. Director. Includes handwritten signatures and dates.

11. Commission Action: X Approved APPROVE ATTORNEY RECOMMENDATION Denied Other J/Sanes

that work. If SGLR were to be successful in obtaining such an injunction, the County would then proceed with condemnation of a wider easement than that originally contemplated in the 1988 Easement Agreement in order to expand the crossing and accomplish the additional traffic lanes. Upon the court's award of the wider easement, the County could then widen the crossing with our own contractor. The County would also continue to proceed with the appeal. This scenario could most likely take between twelve (12) and twenty-four (24) months to complete.

The second option would be to agree to SGLR's request, i.e., withdraw the County's Petition for Review (Appeal). However, absent an agreement in some form, generally setting out the costs and responsibilities of constructing the new widened crossing, the County will be at SGLR's discretion for the terms and conditions of a new easement and construction agreement. This option if adopted, would most likely take approximately nine (9) to twelve (12) months to complete the widening, based on the present workload of the railroad crews, as has been advised in our discussions with SGLR representatives.

Under either option, the County will have a constriction at the Baker Spur Crossing just west of Gator Road for some period of time. Also, under any option, the very western end of Alico Road will remain constricted during FDOT's construction of the Metro Extension from Six Mile Cypress Parkway down to U.S. 41. Under that project, FDOT intends to realign Alico Road to the north. This work will take approximately two (2) years to complete.

At this time, it is the considered recommendation of the Department of Public Works and the County Attorney's Office to proceed with the second scenario assuming SGLR will agree to entering into discussions with the County for the costs and planning for the Alico Road Crossings.

Recent correspondence between the County and Seminole Gulf Railroad is attached for your review.

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

**DATE:** April 4, 2005

**TO:** Elizabeth Walker, Director

Public Resources

and

Kathy Geren

Public Resources

**FROM:**



David M. Owen  
County Attorney

**RE: APRIL 5, 2005 BOARD OF COUNTY COMMISSIONERS' MEETING  
WALK-ON BLUESHEET NO. 20050455 RELATING TO ALICO ROAD  
WIDENING / SEMINOLE GULF RAILWAY CROSSINGS**

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Please schedule the above bluesheet as a Walk-On Item for tomorrow's regular meeting.

The Alico Road Widening Project is at a point in time in its construction such that the coordination of the Railroad Crossings is essential for both the safety and convenience of the traveling public.

Board direction with respect to the County's proceeding with the "Petition for Review" is necessary as soon as possible in order to adjust construction schedules for the Crossings.

Thank you.

DMO/dm

xc: Donald D. Stilwell, County Manager  
James Lavender, Director, Public Works Administration  
Scott Gilbertson, P.E., Director, DOT  
John J. Renner, Chief Assistant County Attorney  
John S. Turner, Assistant County Attorney



# SEMINOLE GULF RAILWAY

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4110 CENTERPOINTE DRIVE, SUITE 207 FORT MYERS, FLORIDA 33916  
TELEPHONE: (941) 275-6060 FACSIMILE: (941) 275-0581  
WWW.SEMGULF.COM

March 22, 2005

Commissioner Ray Judah  
Lee County Board of Commissioners  
2115 Second Street  
Fort Myers, FL 33901



Re: Alico Road Improvement Project

Dear Ray:

At your request we met with David Owen and Jim Lavender on February 28, 2005 to discuss the Alico Road railroad crossing construction issues. I thought the meeting was very productive. On March 10, 2005 Mr. Lavender responded with a positive approach towards resolving many issues. We replied to his letter on March 15, 2005 (copies enclosed).

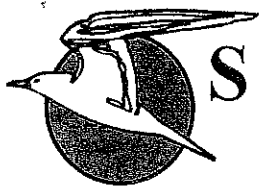
However, seriously standing in the way of progress to working out the details and scheduling the work is the County's continuing legal quest against the railroad. As you know the County has filed suit against the United States Government (note your attorneys incorrectly sued the Surface Transportation Board). This appeal before the United States Court of Appeals in Washington is now going to require substantial resources over the next year or more by a number of interested parties. Particularly troubling to us is that on the day of our meeting with Mr. Owen, the County was filing with the court, unknown to us, the enclosed "Preliminary Statement of Issues to be Raised". I can now understand why Mr. Owen may have been unwilling to discuss withdrawal of the appeal. Apparently, the legal staff has chosen to fight rather than proceed with the widening of Alico Road. (Enclosed for reference is confirmation of our signed and funded deal with FDOT to complete their portion of the job.)

In light of the County's statement of issues we will be reluctantly retaining special counsel to fully investigate several matters including the potential restraint of trade (anti-trust) violations contained in the agreement (copy enclosed) and other documents which the County encouraged and which are now used as a key part of its appeals case. If necessary, we will bring suit for damages against the County and the involved private parties. Of note, the United States Justice Department has assigned counsel from its anti-trust division.

I ask you to review the enclosed documents and stay involved before this matter gets out of hand. Litigation by the County needs to end now if the County is serious in its desire to proceed with completing the widening of Alico Road within a reasonable timeframe.

Sincerely,

  
Gordon H. Fay



# SEMINOLE GULF RAILWAY

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March 15, 2005

Mr. James Lavendar, Director of Public Works  
Lee County Government  
PO Box 398  
Fort Myers, FL 33902-2111

RE: Letter Dated March 10, 2005 to Gordon H. Fay; Alico Road Widening Project.

Dear Mr. Lavender;

I am writing in reference to the above-mentioned letter that was sent to Mr. Fay, and our discussions with you and David Owen on February 28<sup>th</sup>. I hope you will consider this letter to be a "favorable" response to your proposals.

The County must understand our frustration concerning the entire Alico Road project. Since the projects' inception we have worked on a number of quotes, attended countless meetings with your contractor and staff and generated and responded to a number of letters and e-mails. We have spent an inordinate amount of time to provide the County with a number of proposals and various scenarios that included many hours of preliminary engineering and design. We have attempted to cooperate fully with the County relative to this project and to no avail.

As you know the County filed with the Surface Transportation Board for an adverse abandonment to remove the track on the Baker Spur, a ruling was subsequently returned in favor of the Railroad. The County has now filed an appeal to that ruling in Washington served on us the day of the above-mentioned meeting. Had we been aware of the filing when we met at 10:00 AM we most likely would have cancelled the meeting. The actions by the County have resulted in a considerable delay of the Railroad portion of the Alico Road project. It is estimated that the appeal process which the County is now pursuing may take somewhere in the neighborhood of an additional eighteen months to two years to complete, and in all likelihood will, if history repeats itself, most likely result in another ruling in favor of the Railroad. Should the County prevail; actions to take possession of our private property will bring further litigation and thereby delay the project even longer.

The time and effort put forth by Seminole Gulf Railway to assist the County in bringing this project to completion has caused both parties the loss of valuable time and resources that could have been put to more efficient use. The Railroad has also suffered obvious monetary losses that have been associated with this endeavor, In addition to the wasted work effort there have been rail customers who have been driven away as a direct result County's actions. I am sure the County's legal staff, has also invested considerable time and money with less than a favorable result.

Although the need may exist for us to suggest some minor modifications to your proposal, I find the overall concept be reasonable. I am certain that based on that proposal we can agree on an arrangement that will be satisfactory to both the County and the Railroad.

At this time however, we have decided that it is no longer in our best interest to proceed with any additional discussions or agreements at least until the legal issues have been put to rest. I would strongly suggest that you make a recommendation to the County's Legal staff that they consider the withdrawal of the pending appeal so that the project may, at long last, move forward. You have our word that as in the past we will make every effort to work with the County on this project. Any scheduling of future activity relative to the Alico Road project is now exclusively in the hands of the County.

Please give me a call if you have any questions or concerns.

Sincerely;



Harry E. Neeves  
Vice President, Engineering & Real Estate



**LEE COUNTY**  
SOUTHWEST FLORIDA

**BOARD OF COUNTY COMMISSIONERS**

3/11/2005

(239) 479-8301

Writer's Direct Dial Number:

FAX: 479-8307

Bob Janes  
District One

Douglas R. St. Cerny  
District Two

March 10, 2005

Ray Judah  
District Three

Tammy Hail  
District Four

John E. Albion  
District Five

Donald D. Stilwell  
County Manager

Gordon H. Fay, President  
Seminole Gulf Railway  
4110 Centerpointe Drive, Suite 207  
Fort Myers, Florida 33916

Diana M. Parker  
County Hearing  
Examiner

**RE: ALICO ROAD WIDENING PROJECT**

Dear Mr. Fay:

As a follow-up to our discussions with you and Harry Neeves on February 28<sup>th</sup>, Mr. Owen and I met with Lee County DOT staff and are proposing the following:

- Alico Road Crossing #3 will be constructed by SGLR as a new concrete crossing of the widened Alico Road (six lanes) pursuant to our Easement Agreement dated September 14, 1988. Please provide the County with your proposal for construction and a tentative schedule. Also, the County is willing to make its contractor available for the installation of the subgrade in order to expedite the construction of the Crossing. Lee County DOT staff will discuss this enhancement with your staff.
- Gator Road will be constructed by SGLR as a new concrete crossing with a total of three (3) lanes. The signals for the Gator Road Crossing will be the relocated signals from Alico Road Crossing #3. Please provide the County with your proposal for construction of this Crossing and a tentative schedule.
- The County is proposing that the Haitian Road Crossing be constructed without tracks at this time. The County agrees to enter into a Crossing Agreement with SGLR, with provisions addressing future track installation by SGLR and County participation in the construction of the Crossing with tracks. We will work with SGLR on the development of such an Agreement.

Gordon H. Fay  
March 10, 2005  
Page 2

- The County is willing to proceed with Crossing Agreements for both New York and Prospect Roads. We can proceed with standard Crossing Agreements while we are reviewing the "General Agreement for Public Road Crossings" which you provided to us last Monday. If we can agree on the terms and form of the "General Agreement" in the near future, it could be utilized for these two roads, if that is your desire.

We look forward to proceeding with the "Alico Road Crossings" as soon as practicable and your favorable response.

Please feel free to call me at your convenience with respect to our proposals.

Sincerely,

DEPARTMENT OF PUBLIC WORKS



Jim Lavender  
Director

JL/dm

xc: Donald D. Stilwell, County Manager  
David M. Owen, County Attorney  
Scott Gilbertson, P.E., Director, DOT  
Don DeBerry, P.E., Senior Project Manager, DOT





**LEE COUNTY**  
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

February 18, 2005

Writer's Direct Dial Number: (239) 479-8301

Bob Janes  
District One

Douglas R. St. Cerny  
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Ray Judah  
District Three

Tammy Hall  
District Four

John E. Albion  
District Five

Donald D. Stilwell  
County Manager

Diana M. Parker  
County Hearing  
Examiner

Gordon H. Fay  
Seminole Gulf Railway  
4110 Centerpointe Drive, Suite 207  
Ft. Myers, FL 33916

Re: Alico Road Widening Project

Dear Mr. Fay:

The County's Alico Road-widening project is presently on schedule and now approaching the crossing of the Seminole Gulf Railway facility near Gator Road. The County's expansion of Alico Road from two to six lanes is critical for traffic movement to and from I-75, and the public's safety and welfare.

Lee County is proposing to construct the improvements for the crossing under any of the following options:

1. The improvements would be constructed pursuant to the easement agreement dated September 14, 1988, between Seminole Gulf Railway and Lee County, for Alico Road #3 crossing;
2. Execution of a new easement agreement for the crossing in conformity with recent agreements for the other crossings on Alico Road; or
3. Preparing a new countywide agreement for all Seminole Gulf Railway crossings in order to standardize the contracts and simplify the procedures for granting and obtaining them.

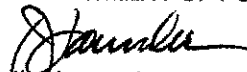
A fourth alternative, which would eliminate the need for any easement agreement, would be conveyance to Lee County of all or part of the Baker Spur, based upon mutually agreeable terms and conditions.

Since time is of the essence for the Alico Road Project, I would appreciate your thoughts with respect to Seminole Gulf Railway's desired course of action within ten days from the date of this letter. My staff will schedule necessary meetings at times convenient to you and Seminole Gulf Railway to discuss appropriate details.

I look forward to hearing from you.

Sincerely,

DEPARTMENT OF PUBLIC WORKS



Jim Lavender  
Director

JHL/wlp

cc: Donald D. Stilwell, County Manager  
David Owen, County Attorney

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AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

2005 FEB 18 PM 2:13  
RECEIVED BY  
LEE CO. ATTORNEY