

WALK-ON

**Lee County Board Of County Commissioners
Agenda Item Summary**


Blue Sheet No. 20061649

1. ACTION REQUESTED/PURPOSE: Discuss and consider legal implications of Section 403.707(11), F.S., and Lee County Resolution No. 92-06-12 relative to continued use of the Gulf Coast Landfill.

2. WHAT ACTION ACCOMPLISHES: Provides Board of County Commissioners' position concerning state law and County Resolution application to the future use of the Gulf Coast Landfill.

3. MANAGEMENT RECOMMENDATION: Consider legal implications of State law and County Resolution concerning the Gulf Coast Landfill.

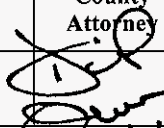

4. Departmental Category: 12 WO #1 **5. Meeting Date:** December 12, 2006

6. Agenda:		7. Requirement/Purpose: (specify)		8. Request Initiated:	
<input type="checkbox"/> Consent	<input checked="" type="checkbox"/>	Statute	403.707	Commissioner	
<input type="checkbox"/> Administrative	<input checked="" type="checkbox"/>	Resolution	92-06-12	Department	County Attorney
<input type="checkbox"/> Appeals		Admin. Code		Division	
<input type="checkbox"/> Public		Other		By:	David M. Owen
<input checked="" type="checkbox"/> Walk-On					County Attorney

9. Background:

At its regular meeting of December 5, 2006, the Board directed that the legal implications of Section 403.707(11), F.S., and Lee County Resolution No. 92-06-12 be reviewed and discussed with respect to and in conjunction with any future solid waste disposal operations at the Gulf Coast Landfill.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				12/7/06	12/9/06	12-7-06	12/1/06	12/7/06	

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN:
12-7-06 nup
12-14-06
COUNTY ADMIN
FORWARDED TO:
12-7-06 nup
12-15-06 to PR

CO. ATTY
FORWARDED
TO CO. ADMIN.
11:50 AM

County Attorney's Office

Re: Gulf Coast Landfill

Your memo of 12-1-06

Att: Mr. Owen

Your above referenced memo, in addition to your response to my earlier question about statutory restrictions against increases in height of the landfill, causes me serious concern about the lateness of this information relative to the time this matter has been before the commission. Information available to the commission now reveals that Florida law prohibits an increase in height to landfills already at 100 feet. As I understand it this prohibition applies only to non charter counties, which included Lee when the law was enacted. Now we find our own previous resolution provided a similar prohibition in height by local action. The question immediately becomes... How did we get so far into this discussion without the benefit of this information? Both of these oversights, now brought to light, provide great credibility to the neighboring resident's claim that they expected the landfill to max out at 100 feet.

Surely we did not deliberately conceal such relevant information. The only conclusion must be that these important facts were either overlooked, or thought to be unimportant legally. Unless I receive very convincing explanations to this set of circumstances it is my intention to move for indefinite postponement of all matters relating to increasing the height of the landfill.

Cc: Stilwell, *LAJENDEE*
BOCC
Solid Waste Dept

(b) The department shall approve the transfer of a permit unless it determines that the proposed permittee has not provided reasonable assurances that the proposed permittee has the administrative, technical, and financial capability to properly satisfy the requirements and conditions of the permit, as determined by department rule. The determination shall be limited solely to the ability of the proposed permittee to comply with the conditions of the existing permit, and it shall not concern the adequacy of the permit conditions. If the department proposes to deny the transfer, it shall provide both the transferring permittee and the proposed permittee a written objection to such transfer together with notice of a right to request a proceeding on such determination under chapter 120.

(c) Within 90 days after receiving a properly completed application for transfer of a permit, the department shall issue a final determination. The department may toll the time for making a determination on the transfer by notifying both the transferring permittee and the proposed permittee that additional information is required to adequately review the transfer request. Such notification shall be provided within 30 days after receipt of an application for transfer of the permit, completed pursuant to paragraph (a). If the department fails to take action to approve or deny the transfer within 90 days after receipt of the completed application or within 90 days after receipt of the last item of timely requested additional information, the transfer shall be deemed approved.

(d) The transferring permittee is encouraged to apply for a permit transfer well in advance of the sale or legal transfer of a permitted facility. However, the transfer of the permit shall not be effective prior to the sale or legal transfer of the facility.

(e) Until the transfer of the permit is approved by the department, the transferring permittee and any other person constructing, operating, or maintaining the permitted facility shall be liable for compliance with the terms of the permit. Nothing in this section shall relieve the transferring permittee of liability for corrective actions that may be required as a result of any violations occurring prior to the legal transfer of the permit.

(11) The department shall review all permit applications for any designated Class I solid waste disposal facility. As used in this subsection, the term "designated Class I solid waste disposal facility" means any facility that is, as of May 12, 1993, a solid waste disposal facility classified as an active Class I landfill by the department, that is located in whole or in part within 1,000 feet of the boundary of any municipality, but that is not located within any county with an approved charter or consolidated municipal government, is not located within any municipality, and is not operated by a municipality. The department shall not permit vertical expansion or horizontal expansion of any designated Class I solid waste disposal facility unless the application for such permit was filed before January 1, 1993, and no solid waste management facility may be operated which is a vertical expansion or horizontal expansion of a designated Class I solid waste disposal facility. As used in this subsection, the term "vertical expansion" means any activity that will result in an increase in the

height of a designated Class I solid waste disposal facility above 100 feet National Geodetic Vertical Datum, except solely for closure, and the term "horizontal expansion" means any activity that will result in an increase in the ground area covered by a designated Class I solid waste disposal facility, or if within 1 mile of a designated Class I solid waste disposal facility, any new or expanded operation of any solid waste disposal facility or area, or of incineration of solid waste, or of storage of solid waste for more than 1 year, or of composting of solid waste other than yard trash.

(12) The department shall establish a separate category for solid waste management facilities which accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for existing facilities to comply with this section to avoid undue hardship to such facilities. However, a permitted solid waste disposal unit which receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems. Facilities accepting materials defined in s. 403.703(17)(b) must implement a groundwater monitoring system adequate to detect contaminants that may reasonably be expected to result from such disposal prior to the acceptance of those materials.

(a) The department shall establish reasonable construction, operation, monitoring, recordkeeping, financial assurance, and closure requirements for such facilities. The department shall take into account the nature of the waste accepted at various facilities when establishing these requirements, and may impose less stringent requirements, including a system of general permits or registration requirements, for facilities that accept only a segregated waste stream which is expected to pose a minimal risk to the environment and public health, such as clean debris. The Legislature recognizes that incidental amounts of other types of solid waste are commonly generated at construction or demolition projects. In any enforcement action taken pursuant to this section, the department shall consider the difficulty of removing these incidental amounts from the waste stream.

(b) The department shall not require liners and leachate collection systems at individual facilities unless it demonstrates, based upon the types of waste received, the methods for controlling types of waste disposed of, the proximity of groundwater and surface water, and the results of the hydrogeological and geotechnical investigations, that the facility is reasonably expected to result in violations of groundwater standards and criteria otherwise.

(c) The owner or operator shall provide financial assurance for closing of the facility in accordance with the requirements of s. 403.7125. The financial assurance shall cover the cost of closing the facility and 5 years of long-term care after closing, unless the department determines, based upon hydrogeologic conditions, the types of wastes received, or the groundwater monitoring results, that a different long-term care period is appropriate. However, unless the owner or operator of the facility is a local government, the escrow

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: December 1, 2006

To: Board of County Commissioners

FROM:



David M. Owen
County Attorney

RE: LEE COUNTY RESOLUTION NO. 92-06-12

Commissioners;

While researching the issues surrounding the proposed development of the Gulf Coast Landfill, my office located the attached Resolution of the 1992 Board expressing its desire to close and cease the Landfill operations at the Gulf Coast Landfill upon the occurrence of conditions precedent which would be most financially favorable to the County.

The text of the Resolution is fairly short; Paragraph 2. is operative.

I have attached the Resolution and the minutes from the meetings adopting the Resolution (June 17, 1992), and subsequently ratifying the final verbiage for Paragraph 2. (July 15, 1992). I am also attaching my June 24, 1992 memorandum mentioned in the July 15, 1992 minutes.

You may wish to discuss the effect of the Resolution at your meeting next Tuesday. The Chairman, at his election, may bring the matter forward for discussion at whatever point in the meeting he may deem appropriate.

Staff will be available to discuss this matter with you at your discretion. Please call if you have any questions.

DMO/dm

Attachments

xc: Donald D. Stilwell, County Manager
James Lavender, Director, Public Works Administration
Lindsey Sampson, P.E., Director, Solid Waste Management
Keith Howard, P.E., Deputy Director, Solid Waste Management
Timothy Jones, Chief Assistant County Attorney
Scott S. Coover, Assistant County Attorney

6/17/92

Additionally, the following costs are outstanding and will be heard by the Court:

6.	Gerson, Preston & Co. - bus. damage experts	9,092.38
7.	Scott McWilliams - marketing	10,064.86
	TOTAL	\$19,157.24

Commissioner Manning moved approval of the item, seconded by Commissioner Judah, called and carried with Commissioner Slisher absent.

- (d) Request Board accept Settlement of Fees and Costs in the following described case; funds are available in Account No. 421-2510-541250-6110-000-5808-03:

Lee County v. Mobil Oil, et al.

Parcel 27

B & B Cash Grocery.

1.	William A. Keyes - attorney fees	\$11,472.43
2.	Calhoun & Associates - appraisal fee	11,025.00
3.	Morris-Depew - engineering/planning	9,604.17
4.	Hanson Appraisal Co. - appraisers	2,500.00
	TOTAL	\$34,601.60

Additionally, the following costs are outstanding and will be heard by the Court:

5.	Gerston, Preston & Co. - bus. damage expert	\$ 2,884.23
6.	Scott McWilliams - marketing	750.00
	TOTAL	\$ 3,634.24

Commissioner Judah moved approval of the item, seconded by Commissioner Manning, called and carried with Commissioner Slisher absent.

9. HEARING EXAMINER

No requests received.

10. CONSTITUTIONAL OFFICERS

No requests received.

APPEALS AGENDA

10:30 A.M. AGENDA ITEM - No requests received.

PORT AUTHORITY

10:30 A.M. AGENDA ITEM - No requests received.

Following a short break, the Chairman called the meeting back to order with all Commissioners present with the exception of Commissioners Manning and Slisher.

WALK-ON NO. 1

8. COUNTY ATTORNEY

Request Board approval of the first amendment to the 1989 Solid Waste Disposal Extension Agreement with Waste Management relating to the development of two (2) Transfer Stations in Hendry County to the Gulf Coast Landfill; no funds are required.

County Attorney James G. Yaeger presented this item. COMMISSIONER MANNING RETURNED TO THE MEETING EARLY IN THE DISCUSSION. Based on discussions at the Management and Planning Meeting, this amendment was drafted. Attorney Yaeger reviewed the Resolution, Agreement and Exhibit "A". Referring to a letter of June 15th from Attorney E. Bruce Strayhorn, of the law firm of Strayhorn & Strayhorn (copy is on file in the Clerk's Office, Minutes Department), Assistant County Attorney David M. Owen reviewed technical points of the proposed agreement.

They proposed the option be exercised over a certain amount of days;

suggested that the Board not select within a certain number of days - leave the option open and choose whether to pay in a lump sum or to pay over time with the tip fee; should the Board choose the option, 120 days would be more appropriate than 60

Exhibit "A"; Paragraph "B"

recommending that the following be included:

(if Section 4.2 is selected by the County)

SubParagraph 1.

change the word "designed" tonnage to "actual" tonnage

Attorney Owen compared this amended agreement with a separate agreement. Commissioner Judah discussed his concerns with the amended agreement and pointed out the need to look at separate agreements; to separate the Transfer Stations from the Landfill issue. Commissioner Lopez-Wolfe apprised the Board that direction was given at the April 24th meeting of the Board regarding Transfer Stations. Attorney David Green, Region Counsel for Waste Management, Inc., responded to questions from Commissioner Manning regarding their position on this amended agreement. Hendry County Attorney Dan Stevens expressed the view of Hendry County and responded to Commissioner Judah. Commissioner St. Cerny addressed the consequences of breaking long term agreements. Attorney Yaeger responded that the County is not under a long term agreement with Waste Management to do Transfer Stations. Attorney Yaeger pointed out that the second Whereas could be stricken [ownership and operation of the new sanitary landfill], as it is not the main issue. Mr. Sam Rosania, Assistant Director, Department of Solid Waste, Lee County Utilities, reminded the Board that the methodology, once it is established, can be further refined at a later date. Commissioner Manning moved to approve the Resolution, seconded by Commissioner Lopez-Wolfe, called and carried with Commissioner Judah voting nay and Commissioner Slisher absent. Commissioner Manning offered the following motion: "that moves the first amendment to the Solid Waste Disposal Extension Agreement" ... "delete the second WHEREAS clause in the opening section; in addition to that we will amend the Transfer Facility Rate Calculation Exhibit `A' to give the County the flexibility under subparagraph `B' that if Section 4.2 is selected by the County, as a lump sum payment versus a tipping fee inclusion, we will have that flexibility; and under footnote #1, that the total gross cost of items, etc., shall be divided by the Actual Tonnage capacity and delete the word `designed'". Attorney Yaeger recommended that on the WHEREAS, a period be placed after ("Extension Agreement") and "for the ownership and operation of a new sanitary landfill" be removed. Commissioner Manning agreed to this change. The motion was seconded by Commissioner Lopez-Wolfe, called and carried with Commissioner Judah voting nay and Commissioner Slisher absent. The Board concluded this item with a discussion of the Hendry I Landfill and the closing of the Gulf Coast Landfill. Commissioner Judah suggested directing the County Attorneys to put together a Resolution to close the Gulf Coast Landfill once it either meets maximum design capacity or the incinerator and the Hendry County Landfill is in place to accept solid waste. Commissioner Manning so moved, seconded by Commissioner Judah, called and carried with Commissioner Slisher absent. Attorney Yaeger questioned who should be on the negotiating team. Commissioner Manning advised that he would like the Consultant, County Attorney's Office and the County Administrator. Attorney Yaeger agreed to bring this back. RESOLUTIONS NO. 92-06-11 and 92-06-12

COMMITTEE APPOINTMENTS

Commissioner Judah moved to clarify that Mr. Ralph Livingston was appointed to the COMMUNITY REDEVELOPMENT ADVISORY COMMITTEE, not the Local Planning Agency, seconded by Commissioner Manning, called and carried.

LEE COUNTY RESOLUTION NO. 92-06-12

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY RELATING TO THE CLOSURE OF THE GULF COAST LANDFILL.

WHEREAS, the Board of County Commissioners is the Governing Body in and for Lee County, Florida; and,

WHEREAS, the Board of County Commissioners is vested with the authority to regulate and control the management of solid waste within Lee County pursuant to Chapters 125 and 403, Florida Statutes; and,

WHEREAS, the Board of County Commissioners, in conjunction with the implementation of its integrated Solid Waste Management Program, to include the development of a new regional landfill, wishes to expressly direct the closure of its current landfill facility; and,

WHEREAS, the County is now in the process of developing said new regional landfill facility in Hendry County, Florida, and therefore, the Board of County Commissioners finds that the closure of the Gulf Coast Landfill in Lee County upon the occurrence of certain events will be in the public's best interest and to the public benefit; and,

WHEREAS, the Board of County Commissioners now wishes to issue such direction by County Resolution,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

1. The above recitations and findings as stated above are hereby adopted and ratified by the Board as if fully restated herein.
2. The Board of County Commissioners hereby expressly directs that all solid waste disposal operations at the Gulf Coast Landfill in Lee County shall cease upon: (i) the reaching of the final design height of 100' NGVD, or (ii) the commencement of operation of the Lee County Waste-to-Energy Facility and the opening of the new landfill facility; whichever event, (i) or (ii), is more financially prudent for Lee County.

6-17-92 WC#1

3. This Resolution shall take effect immediately upon its adoption by the Board.

The foregoing Resolution was offered by Commissioner Manning, who moved its adoption. The motion was seconded by Commissioner Judah and, being put to a vote, the vote was as follows:

DOUGLAS ST. CERNY	<u>AYE</u>
JOHN E. MANNING	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
VICKI LOPEZ-WOLFE	<u>AYE</u>
DONALD SLISHER	<u>ABSENT</u>

DULY PASSED AND ADOPTED this 17th day of June, 1992.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: *Lisa S. Poirer*
Deputy Clerk

By: *[Signature]*
Chairman

APPROVED AS TO FORM:

By: *[Signature]*
Office of County Attorney

- (a) Request Board ratify language for a Resolution to close the Gulf Coast Landfill from the Board's meeting of June 17, 1992. Resolution No. 92-06-12 to become part of the official minutes of the June 17, 1992 meeting.

PULLED FOR DISCUSSION

County Attorney James G. Yaeger responded to inquiry from Commissioner Judah regarding verbiage in the Resolution. He was concerned that the incinerator could be on line, the Hendry County landfill ready and Gulf Coast Landfill not be at a hundred feet, so the incinerator would sit idle. Attorney Yaeger stressed that there are financial impacts for not using the facility to its design height. The Board agreed to include language similar to that in the ~~July~~ 24th memo from Assistant County Attorney David M. Owen:

(June 8) "...put together a Resolution to close the Gulf Coast Landfill once it either meets maximum design capacity or the incinerator and the Hendry County Landfill is in place to accept solid waste ..."

Commissioner Slisher suggested adding, "which is the most financially prudent to Lee County". Following discussion Commissioner Lopez-Wolfe stated, "I'll move the item, with the caveat that the Resolution will then have adopted into it a language that reflects the Board's motion as made on June 17th, and in addition to that, add a clause that reflects language that says whichever is financially prudent for the County", seconded by Commissioner Judah, called and carried. RESOLUTION NO. 92-06-12

9. HEARING EXAMINER

No requests received.

10. CONSTITUTIONAL OFFICERS

- (a) Request Board accept for information and filing, the Monthly Financial Report from the Clerk of Circuit Court's Finance Division; copy is on file in the Clerk's Office, Minutes Department.

Commissioner Lopez-Wolfe moved approval, seconded by Commissioner Slisher, called and carried.

- (b) Request Board approve Weekly Receipts and County Disbursements.

Commissioner Lopez-Wolfe moved approval, seconded by Commissioner Slisher, called and carried.

- (c) Request Board approve the Minutes of the following meetings of the Board of County Commissioners:

June 29, 1992	(Management and Planning)
June 30, 1992	(Budget Workshop)
June 30, 1992	(Emergency)

Commissioner Lopez-Wolfe moved approval, seconded by Commissioner Slisher, called and carried.

Following a short break, the Chairman called the meeting back to order with all Commissioners present with the exception of Commissioner Slisher.

ADMINISTRATIVE AGENDA

1. COMMUNICATIONS

No requests received.

2. COMMITTEES AND BOARDS

No requests received.

3. LEGISLATION

M E M O R A N D U M

FROM

THE OFFICE OF
COUNTY ATTORNEY

DATE: 24-Jun-1992

TO: Board of County Commissioners

FROM:



David M. Owen
Assistant County Attorney

RE: RESOLUTION FOR CLOSURE OF GULF COAST LANDFILL

At the Board's meeting of Wednesday, June 17, 1992, under Walk-On Item #1 relating to the adoption of a Contract Amendment for the development of the Hendry County Transfer Stations, the Board moved and adopted a Resolution for the Closure of the Gulf Coast Landfill.

The Board's motion, which was adopted, was to:

"...put together a Resolution to close the Gulf Coast Landfill once it either meets maximum design capacity or the incinerator and the Hendry County Landfill is in place to accept solid waste ..."

Because of certain financial and practical benefits that accrue to the County from utilizing the Gulf Coast Landfill to the final design height of 100', and for the finding that it is to the public's benefit to close the landfill, I am recommending that the Resolution that has been drafted which directs the closing of the Lee County Landfill at the final design height of 100' NGDV be formally ratified by the Board as a clarification item at its regular meeting of July 8, 1992 or July 15, 1992, whichever is more appropriate.

I will schedule the matter for the Board's consideration on July 8, 1992, and if appropriate, may be carried over to July 15, 1992. If you have any questions relative to this recommendation, please advise at your convenience.

DMO:bl1

Enc.

xc: James G. Yaeger, County Attorney
Robert W. Gray, Deputy County Attorney
Julio Avel, County Administrator
Karen B. Hawes, Deputy County Administrator
Daryl Walk, Utilities Director
Lindsay Sampson, Utilities

November 10, 1993 (Regular)

Commissioner Manning moved approval, seconded by Commissioner Albion, called and carried.

15. COMMUNITY REDEVELOPMENT AGENCY

No requests received.

16. VISITOR AND CONVENTION BUREAU

No requests received.

ADMINISTRATIVE AGENDA

1. COUNTY ADMINISTRATOR

No requests received.

2. CONSTRUCTION SERVICES

No requests received.

3. COUNTY COMMISSIONERS

No requests received.

4. COMMUNITY DEVELOPMENT

No requests received.

5. HUMAN SERVICES

- (a) Request Board amend Administrative Code AC-3-10 for fees charged for services provided by the HRS Lee County Public Health Unit which are not set by State of Florida Administrative Codes; delete fees that are subsequently pre-empted by State fees.

Commissioner Manning moved the item, seconded by Commissioner Albion. In response to Commissioner Judah's comments, Ms. Karen Hawes, Director, Department of Human Services, noted that Staff receives many requests for fee waivers and that this would set a precedent. Following further discussion, Attorney Yaeger recommended that the Board go forward with this request and discuss the waiver of fee request separately; if it needs to be changed we will bring it back. The motion was called and carried.

6. ADMINISTRATIVE SERVICES

No requests received.

7. PUBLIC SERVICE DIVISIONS

No requests received.

8. SOLID WASTE

- (a) Request Board consider negotiated settlement with Waste Management, Inc. of Florida (WMIF), including final revised contract documents as an offer of settlement of pending litigation, reducing anticipated costs due to the revised scope of services; execute contracts and/or provide further Board direction to Staff.

✓ Commissioner Manning asked that it be looked into while the meeting is recessed, for clarification on the item referencing the construction and debris material at the Gulf Coast Landfill. Commissioner Manning also noted, for those in the media that need to have further clarification on what is being done today, he has coordinated a post-morning session meeting in the East Room for any media people who want to ask any questions.

Following a short break, the Chairman called the meeting back to order with all Commissioners present. County Attorney James C. Yaeger gave a

A8a
2/2/94

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brief history of this request and the approach taken in this proposed settlement. He stated that the documents before the Board today are:

The amended Gulf Coast Landfill Contract (including corrected language to page 6 (a copy is on file in the Clerk's Office, Minutes Department))

The amended Solid Waste Disposal Extension Agreement which is now the Handry County Agreement

The Disposition of Site H Letter

The Offer of Settlement from Waste Management to resolve the pending litigation

He stated that this was a joint effort between the County Attorney's Office, County Administration, and retained outside counsel and expert landfill accountants. Attorney Yaeger introduced Attorney Michael Nuechterlein, of the law firm of Carlton, Fields, et al.; Attorney James Jackson, with the firm of Verner, Iilpfert, et al. (contracts counsel); and Mr. David Milkowsky, of Ernst and Young (expert witness/accounting). Attorney Yaeger read pertinent contract language. Attorney Nuechterlein stated that he was engaged as litigation counsel in connection with this matter. Attorney Jackson reviewed the various elements that were discussed during the six months in the course of the settlement discussions and responded to questions by the Board. Mr. Milkowsky, with the aid of a chart, reviewed Landfill Contracts summaries (costs), a copy of which is on file in the Clerk's Office, Minutes Department. Mr. Larry Johnson, Solid Waste Department Director, responded to various questions by the Board; i.e. ash hauling contract; existing haulers contracts; and the effect on the garbage cost to the homeowner, if the proposed settlement is approved. Commissioner Manning moved the negotiated settlement, seconded by Commissioner Mann for discussion. Commissioner Manning asked the County Attorney if he could include in the motion an additional line item that says to the effect: subject to notification of the landowners abutting Gulf Coast Landfill that said landfill will be closed at the earliest point according to the 1992 resolution which states "is economically feasible for the County"; noting the fact that cleaner construction and demolition material will be the only thing that goes in the Gulf Coast Landfill and the time frame is between five and seven years. Attorney Yaeger stated that he thought that was covered in the contract and he didn't feel it needed to be part of the motion. Commissioner Manning stated that his motion would be to accept the offer of settlement. Commissioner Mann stated, for the record, that the Board, as policy makers, have to look at the broad picture/all of the components in this case, over twenty years, and he views this as a good settlement. Commissioner Albion suggested a five to ten minute video to inform the public of the significance of this settlement. He further noted that garbage bills will not be going down; however, will not go up as much; less of an increase over twenty years. Commissioner Judah thanked all involved, on behalf of the Board. The motion was called and carried. Attorney Yaeger requested a motion to authorize execution of the amended contract documents, being the Gulf Coast Landfill Contract with the corrective letter change; the amended Solid Waste Disposal Agreement; and the Disposition of Site H. Commissioner Manning so moved, seconded by Commissioner Mann, called and carried.



9. TRANSPORTATION

No requests received.

10. UTILITIES

No requests received.

11. COUNTY ATTORNEY

THIS ITEM WAS MOVED FROM THE CONSENT AGENDA.

- (d) Request Board approve the following described purchase; authorize attendant actions; funds are available in Account No. 188-2510-541250-6110-410-4752-00:

Project: Gladiolus Drive Widening
Square feet: 86,064+/- square feet



LEE COUNTY BOARD OF COUNTY COMMISSIONERS **Revised**
 AGENDA ITEM SUMMARY BLUE SHEET NO: 931733

<p>1. REQUESTED MOTION:</p> <p>Consider negotiated settlement with Waste Management Inc. of Florida (WMIF), including final revised contract documents as an offer of settlement of pending litigation. The revised contracts reduce anticipated costs due to the revised scope of services.</p> <p>Authorize the chairmen to execute approved contracts and/or provide further Board direction to staff.</p>	<p>2. DEPARTMENTAL CATEGORY:</p> <p>08 Solid Waste 80</p> <p>COMMISSION DISTRICT # CW</p> <p>3. MEETING DATE:</p> <p>2-2-94</p>
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<p>4. AGENDA</p> <p>CONSENT <input checked="" type="checkbox"/> ADMINISTRATIVE APPEALS PUBLIC TIME REQUIRED:</p>	<p>5. REQUIREMENT/PURPOSE:</p> <p>(Specify) STATUTE ORDINANCE ADMIN.CODE <input checked="" type="checkbox"/> OTHER WMI SETTLEMENT</p>	<p>6. REQUESTOR OF INFORMATION</p> <p>A. COMMISSIONER _____ B. DEPARTMENT <u>SOLID WASTE</u> C. DIVISION _____ BY <u>LARRY A. JOHNSON, P.E., DIRECTOR</u></p>
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7. BACKGROUND

Since approximately mid-August, 1992, Lee County and Waste Management, Inc. of Florida (WMIF) have had certain contractual issues in dispute regarding the development and use of landfill facilities.

On February 17, 1993, the Board of County Commissioners authorized the staff and consultants to conduct negotiations with Waste Management, Inc. of Florida (WMIF) to resolve these contractual issues prior to litigation.

WMIF filed a lawsuit concerning certain landfill issues on March 22, 1993. Lee County filed a countersuit and entered into parallel negotiations to resolve this litigation. On June 23, 1993, the Board of County Commissioners approved certain conceptual business points, which were to be included in a negotiated settlement. The Board of County Commissioners further authorized the staff and consultants to suspend litigation activities for approximately 60-90 days pending negotiation of revised contractual agreements based on the agreed upon conceptual business points.

On December 22, 1993, Board authorized preparation of final settlement offer conditions and documents for settlement of outstanding issues with Waste Management Inc. of Florida for subsequent Board of County Commissioners' final review and consideration.

Funds for construction and operation will be from landfill revenue bonds and solid waste operations funds.

8. STANDING COMMITTEE REVIEW:

Reviewed by _____ Board Management & Planning Committee Date(s): _____

COMMITTEE REVIEW NOT REQUIRED

9. RECOMMENDED APPROVAL

DEPARTMENT DIRECTOR	Department of Administrative Services		Office of Budget Services			OTHER	COUNTY ATTORNEY	COUNTY ADMINISTRATOR
	Purchasing	Human Res.	EA	GC	Risk Dir.			
<i>L.A. Johnson</i> LA Johnson	N.A.	N.A.	<i>MM</i>				<i>[Signature]</i> 1/7/94	<i>J.W. FRENCH, P.E.</i> 1/7/94

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED *to 2/2/94 mtg.*
 OTHER

(4143)

REC'D BY DSS 1/7/94 9:30 AM

CO. ATTY. FORWARDED TO CO. ADMIN. 1/7/94 10:30 AM

DSS FORWARDED TO CO. ATTY 1/7/94 9:30

AGENDA BACK-UP INFORMATION

revision
Blue Sheet #931733

INITIATED BY LARRY A. JOHNSON, P.E., DIR. REQUESTED BY LARRY A. JOHNSON, P.E., DIR.
SOLID WASTE Name/Department

1. DESCRIPTION AND OBJECTIVE OF THE ISSUE

Consider resolution of outstanding landfill Contract dispute with Waste Management Inc. of Florida (WMIF).

2. PROPOSED POLICY, PROCEDURE OR PLAN OF ACTION

Consider negotiated settlement vs. continued litigation with WMIF to resolve outstanding landfill contract issues presently in dispute. Authorize Chairman to sign revised contracts with minor changes which are required to implement the negotiated settlement and/or provide further Board direction to staff.

3. OPTIONS (List Advantages/Disadvantages of Each Option Listed)

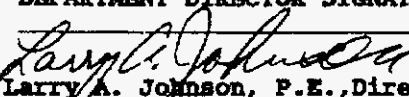
1. Approve negotiated settlement of landfill contract.
2. Authorize staff and consultants to continue litigation.

4. FINANCIAL IMPACTS/FUNDING SOURCE

Construction and operating funds will be from landfill revenue bonds and solid waste operation funds.

5. STAFF RECOMMENDATIONS, AND JUSTIFICATION FOR RECOMMENDATIONS

6. MANDATED? Y N BY WHAT AUTHORITY?

DEPARTMENT DIRECTOR SIGNATURE	COUNTY ADMINISTRATOR SIGNATURE	MEETING DATE	TIME REQUIRED
 Larry A. Johnson, P.E., Director		1/19/94 (4145)	