

WALK ON. 2 ATY

<b>Lee County Board Of County Commissioners</b> <b>Agenda Item Summary</b>	<b>DATE CRITICAL</b> <b>Blue Sheet No. 20070691</b>
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**1. ACTION REQUESTED/PURPOSE:** Staff has prepared three (3) recommendations for repair of a seawall and paved deck owned by Snug Harbor. Those recommendations are: (1) Do nothing more because Lee County has temporary stabilized the seawall and deck while the affected parties pursue an insurance or other settlement; (2) Snug Harbor or contractor repair seawall adjacent to the construction zone. The repair estimate is \$480,000. The potential problem is the failure of the seawall outside the construction zone during construction due to other seawall weaknesses; and (3) The entire seawall that is weakened by age could be replaced. At this time it is difficult to determine what the limits of this would be and how far outside the construction zone it might extend. This would require an agreement between the Snug Harbor owner and the contractor regarding joint responsibility.

**2. FUNDING SOURCE:** No funds required.

**3. WHAT ACTION ACCOMPLISHES:** Provides formal direction from Board.

**4. MANAGEMENT RECOMMENDATION:** Staff recommends number one.

<b>5. Departmental Category:</b> 06 <b>WOA</b>		<b>6. Meeting Date:</b> May 1, 2007
<b>7. Agenda:</b> <input type="checkbox"/> Consent <input type="checkbox"/> Administrative  <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input checked="" type="checkbox"/> Walk-On	<b>8. Requirement/Purpose: (specify)</b> <input type="checkbox"/> Statute <input type="checkbox"/> Ordinance  <input type="checkbox"/> Admin. Code <input checked="" type="checkbox"/> Other	
	<b>9. Request Initiated:</b> <b>Commissioner</b> _____ <b>Departments</b> County Attorney's Office & Lee County Utilities  <b>Division</b> _____ <b>By: David M. Owen</b> <i>Rudrea K. Jasek</i> <b>County Attorney</b>  <b>By: Doug Meurer</b> <i>Doug Meurer</i> <b>Director, Utilities</b> 4-26-2007	

**10. Background:**  
 A portion of the Snug Harbor paved deck collapsed in April of 2006 during construction work, adjacent to the property, on an 18 inch diameter sanitary sewer force main connection for Lee County Utilities (LCU). The contractor immediately installed steel horizontal shoring on the seawall to stabilize the situation. LCU then directed an underwater video of the problem area and authorized an independent structural investigation to determine the problem and potential solutions.

Continued on Page 2

**11. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr	
<i>J. Smith</i> 4-27-07	N/A	N/A	N/A	<i>Rudrea Jasek</i>	<i>RK 4/27</i>	<i>ML 4/27</i>	<i>R 4/27/07</i>	<i>DP 4/27/07</i>	<i>J. Smith</i> 4-27-07

**12. Commission Action:**

Approved *AS RECOMMENDED*  
 Deferred *OPTION # 1 - M/H*  
 Denied  
 Other

RECEIVED BY COUNTY ADMIN: <i>LCU</i>
4/27/07 5 PM
COUNTY ADMIN FORWARDED TO: <i>PR</i>
4/30/07 11:47 AM

The structural investigation revealed there was virtually no embedment material at the base of the seawall. During construction, material behind Snug Harbor's seawall washed out and a void developed causing a portion of the paved deck area to collapse.

The structural report indicates the seawall had been compromised from past boat mooring and dock improvements. The inherent problems with the seawall extend far beyond the area affected by the construction. The structural report emphasized that the owner of Snug Harbor needs to be aware of the responsibility of handling their respective seawall problems.

LCU had a design and scope completed to repair the area affected by construction. The bid was for approximately \$480,000. All information was shared with the Snug Harbor Owner's attorney and with the staff of Fort Myers Beach (FMB).

The Lee County Attorney's Office advised the Snug Harbor representatives and the FMB staff of their options to fix the problems, and the contractor's insurance information was provided. LCU then stopped any further efforts to repair the seawall and defer the matter to Snug Harbor and FMB to make a claim against the contractor's insurance carrier.

At the direction of the Board of county Commissioners, LCU staff filled the hole on the deck at Snug Harbor and left it barricaded.

Attachment: Legal Memorandum

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**MEMORANDUM**  
**FROM THE**  
**OFFICE OF COUNTY ATTORNEY**

DATE: April 27, 2007

TO: Board of County Commissioners

FROM:

  
John J. Renner  
Chief Assistant County Attorney

RE: Snug Harbor Danella

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**FACTS**

Lee County employed The Danella Companies, Inc. as an independent contractor to install water and sewer lines in the bay bottom between the mainland and the Town of Ft. Myers Beach. The lines were to be installed underwater within the State right of way. The water line was to connect to the water distribution system owned by the Town.

During Danella's construction work, land adjacent to the work area subsided leaving a large hole in the ground. The hole affected a portion of paved decking owned by Resort Restaurants, Inc. and Kiric Investments (Snug Harbor). Lee County did nothing to cause the subsidence and its connection to this occurrence is its contract with Danella.

An investigation of the cause of the subsidence was conducted by an engineering firm. The findings were that the seawall had deteriorated and was structurally compromised. There was no conclusive evidence to prove whether the underground void was a preexisting condition due to the seawall's condition, that Danella's activity caused the void or whether a combination of the two caused the hole.

Danella has asserted the hole was caused by a pre-existing condition. The Town and Snug Harbor have looked to Lee County to repair the condition. Snug Harbor has served Lee County with a notice of intent to sue under Fla. Stat. 768.28 (2006), Florida's waiver of sovereign immunity statute.

Danella has installed steel sheeting to stabilize the immediate area of the hole and the hole has been filled. This is a temporary fix and the permanent solution will require a substantial amount of privately owned seawall be replaced. This legal analysis addresses the permanent fix.

**LEGAL ANALYSIS**

The law is clear that a party who employs an independent contractor is not liable for the actions, and therefore

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Re: Snug Harbor

any damage caused by such actions, of the independent contractor performing the contracted for work. Danella was employed by Lee County as an independent contractor. To the extent Danella caused or contributed to the subsidence, Lee County would not be liable for any injury, damage or repairs.

To further protect the interests of Lee County, the County's contract with Danella required Danella to maintain liability insurance to cover claims that may arise out of it's construction activities. Lee County is named as an additional insured on this insurance policy. Additionally, the contract requires Danella to indemnify and hold harmless Lee County from any suits or claims. Copies of the insurance certificate and the investigative report were provided to the Town and Snug Harbor.

The Florida Constitution requires that public funds be spent only for public uses and prohibits the expenditure of public funds for private purposes. It does not matter whether the public funds are derived from taxes, user fees, gift or otherwise; public funds may not be used for private purposes. In order to justify the expenditure of public funds to repair or improve private property, there must be some direct or contingent liability on behalf of the government entity to pay for such repair or improvement. There is no such liability in this matter.

JJR/wlw

cc: David Owen

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