

**WALK ON # 2**

Lee County Board Of County Commissioners  
Agenda Item Summary

Blue Sheet No. 20060091

1. ACTION REQUESTED/PURPOSE: Direct County Attorney to file a motion for clarification in 'argano v. Lee County, Case No. 2D04-4799.

2. WHAT ACTION ACCOMPLISHES: Directs County Attorney to seek clarification of appellate court's opinion as to the use of toll revenue.

3. MANAGEMENT RECOMMENDATION: Approval.

4. Departmental Category: 12 - County Attorney **WO#2**

5. Meeting Date: **01-31-2006**

6. Agenda:  
 Consent  
 Administrative  
 Appeals  
 Public  
 Walk-On

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

8. Request Initiated:  
 Commissioner \_\_\_\_\_  
 Department \_\_\_\_\_ County Attorney  
 Division \_\_\_\_\_ Litigation  
 By: John J. Renner, Chief  
 Assistant County Attorney

9. Background: Save Our Bay, Inc. and others sued Lee County over various actions and decisions made regarding the Sanibel Bridge. The circuit court dismissed the case and an appeal was filed. The Second District Court of Appeal issued a decision affirming most of the circuit court's decisions but versed on the sole issue to permit Plaintiff to try and make a claim that the Sanibel Bridge toll is "unreasonable." Plaintiff has offered to settle the case by voluntarily dismissing its case and each party will bear its own costs.

The decision of the appellate court is acceptable to the County Attorney and we are confident we will prove the toll is reasonable. Moreover, accepting the settlement would obviate the need to litigate the reasonableness of the toll. However, there is a statement in the decision that may be interpreted as a possible misstatement of the law. The statement suggests tolls may be used on "related roadways." While tolls may be used on related roadways, Florida law does not limit the use of tolls on "related roadways." On the contrary, Florida law permits toll revenue to be used on any "transportation facilities" within the county, whether related to the toll generating facility or not. On this sole point, the County Attorney's Office recommends the Board authorize the filing of a Motion for Clarification and to respond to the settlement offer once the Motion for Clarification is ruled upon by the Second District Court of Appeal.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mer.	
				<i>[Signature]</i>	RK 1/30	1/30/06	1/30/06	1/30/06	HS 1/30/06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATTY. FORWARDED TO CO. ADMIN. 1/27/06

RECEIVED BY COUNTY ADMIN: RIC  
 1-27-06  
 4:21  
 COUNTY ADMIN FORWARDED TO: [Signature]  
 1/30/06  
 4:06 pm.

**DeSalvo, Richard A.**

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**From:** Payne, Wendy L.  
**Sent:** Monday, January 30, 2006 4:15 PM  
**To:** DeSalvo, Richard A.  
**Subject:** RE: Bluesheet No. 20060091 coming your way-Walk-On

The reason for the walkon, Dick, is that we only have 15 days to respond to the Court's Order entered on January 20<sup>th</sup>. So we need the Board's approval to respond. Does that answer your question?

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**From:** DeSalvo, Richard A.  
**Sent:** Monday, January 30, 2006 3:51 PM  
**To:** Payne, Wendy L.  
**Subject:** RE: Bluesheet No. 20060091 coming your way-Walk-On

I looked it up in Blue Sheet Tracking and it has not made it to County Admin yet. I would suggest that you do. Thanks  
Dick

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**From:** Payne, Wendy L.  
**Sent:** Monday, January 30, 2006 3:36 PM  
**To:** DeSalvo, Richard A.  
**Subject:** RE: Bluesheet No. 20060091 coming your way-Walk-On

Yes, it is. Do I need to track it down or do something?

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**From:** DeSalvo, Richard A.  
**Sent:** Monday, January 30, 2006 3:24 PM  
**To:** Payne, Wendy L.  
**Subject:** RE: Bluesheet No. 20060091 coming your way-Walk-On

Wendy

Is this walkon for tomorrow's agenda? I have yet to receive anything. Please let me know.

Thanks  
Dick

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**From:** Payne, Wendy L.  
**Sent:** Friday, January 27, 2006 2:25 PM  
**To:** DeSalvo, Richard A.  
**Subject:** Bluesheet No. 20060091 coming your way-Walk-On

<< File: Bluesheet No. 20060091.doc >>

# RALF BROOKES, ATTORNEY

January 27, 2006

Lee County  
c/o County Attorney David Owen  
Lee County Government Center  
Ft Myers Florida  
Via email

COPY

Re: **Settlement Proposal Sanibel Bridge Tolls**

Dear County Attorney Owen:

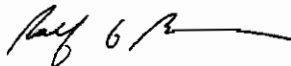
As you know, on January 20, 2006, the 2<sup>nd</sup> District Court of Appeals issued an opinion (attached) that remands the bridge case back to the Circuit Court to determine whether the toll (a user fee) is reasonable.

As the court notes however, "a lot of water<sup>1</sup> has gone under the bridge" since the case was first filed. It appears from our cursory review of the current situation that the tolls collected at the Sanibel Causeway will be allocated to the Sanibel Causeway and truly related projects such as toll booth improvements, debt reduction and importantly, an on-going maintenance program of the new causeway facilities.

Rather than continue to pursue the case, we would be willing to file a voluntary dismissal with each side covering their own costs and fees. Are you amenable to an Agreed Order (or, in the alternative, withdrawing your previously-filed Motion for Costs and Fees if we file a Voluntary Dismissal of the case) resolving the case in this manner?

Please let me know prior to filing our Motion for Reconsideration and our Motion for Costs incurred in the appeal under Rule 9.400 once the mandate is issued by 2<sup>nd</sup> DCA.

Sincerely,



Ralf Brookes Attorney  
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Cape Coral, Florida 33904  
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[ralf@ralfbrookesattorney.com](mailto:ralf@ralfbrookesattorney.com)



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<sup>1</sup> In fact, Calooshatchee "water" quality and quantity has now become a primary concern to Sanibel Islanders and Lee County as well as our state and congressional delegations.