

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL COURT  
IN AND FOR MONROE COUNTY, FLORIDA

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, on behalf of  
THE BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT TRUST FUND,  
State of Florida,

Plaintiff, NO: 95-20-165-CA-18

vs.

EVERETT G. WEST, et al.,  
Defendant.

\_\_\_\_\_ /

Motion in Limine  
(Continuation from August 2, 2006)  
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The above entitled cause came on for hearing  
before the Honorable LUIS GARCIA Circuit Court Judge,  
pursuant to Notice.

Upper Keys Govt. Center  
88820 Overseas Highway  
Tavernier, FL 33070  
Friday, September 15, 2006  
1:30 p.m. - 5:00 p.m.

MONROE COUNTY COURT REPORTERS  
(305) 852-7344

APPEARANCES:

Appearing on behalf of Plaintiff:

PAUL A. LEHRMAN, Assistant Attorney General  
Office of the Attorney General  
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Tallahassee, FL 32399-1050

For the Defendant:

JAMES S. MATTSON, ESQ.  
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Key Largo, FL 33037  
ANDREW M. TOBIN, ESQ.  
P.O. Box 620  
Tavernier, FL 33070

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MONROE COUNTY COURT REPORTERS  
(305) 852-7344

1 THE COURT: For the record Florida Department of  
2 Environmental Protection versus Everett West.  
3 95-20165-CA. Announce your presence for the record,  
4 please.

5 MR. LEHRMAN: Paul Lehrman, assistant attorney  
6 general, for the Department of Environmental Protection.

7 MR. MATTSON: Jim Mattson and Andy Tobin for the  
8 property owners.

9 THE COURT: If my recollection is correct we are  
10 on the defendant's motion in limine, correct?

11 MR. MATTSON: That's correct.

12 MR. LEHRMAN: Actually it's both, Your Honor. We  
13 have one as well.

14 THE COURT: All right.

15 MR. LEHRMAN: It's the same --

16 THE COURT: Same issue?

17 MR. LEHRMAN: Same issues. Also I have a  
18 deposition to file with the court. Should I wait for  
19 the clerk?

20 THE COURT: If you would please, yes.

21 Mr. Mattson, do you want to call your first  
22 witness.

23 MR. MATTSON: Your Honor, the defendants call Bob  
24 Gallaher. While he's getting organized let me just tell  
25 you where we are going to go, what we are going to do.

1 We have two expert witnesses, one of them is also a fact  
2 witness. Bob Gallaher is the appraiser in this case.  
3 Don Craig is the planning expert. He also was the  
4 planning director for Monroe County from '87 to about  
5 '90 and he's worked since then privately. We have  
6 depositions, we have taken depositions of two county  
7 commissioners, Ken Sorensen and Ed Swift. Ken Sorensen  
8 is unable to be here. He indicated that at his  
9 deposition. And Ed Swift sent me a letter this morning.  
10 He has a family medical emergency. He is not able to be  
11 here. The witnesses have read their depositions.  
12 Counsel has their depositions and we'll move those in at  
13 this time.

14 In essence we are going to start with Mr. Gallaher  
15 who is going to describe the market in North Key Largo  
16 from approximately 1960 to today. And we are then going  
17 to call Mr. Craig who is going to, both from an expert  
18 perspective having reviewed documents as well as from  
19 his own personal experience, is going to discuss the  
20 involvement of the state government with Monroe County  
21 government in the North Key Largo moratoria and  
22 regulations from approximately 19, the mid 1970's until  
23 today.

24 THE COURT: And the issue is the valuation date?

25 MR. MATTSON: The issue really is this: We

1 contend that there is condemnation blight on North Key  
2 Largo. I think the evidence is going to show that no  
3 appraiser in the last ten years has used, in court, has  
4 used appraisals of comparables in North Key Largo when  
5 appraising North Key Largo property because of the  
6 condemnation blight. They have had to go outside of  
7 North Key Largo. We are going to show that starting in  
8 1982, Monroe County adopted a moratorium on major  
9 developments which affected North Key Largo primarily,  
10 but affected the whole Keys. And in '83 they converted  
11 this into a moratorium by ordinance.

12 In '86 those moratoria expired and the county  
13 adopted a moratorium which was to be resolved by the  
14 production of the habitat conservation plan within one  
15 year and that that habitat conservation plan has, as we  
16 stand here today, never been approved.

17 Also at this point in time the state, federal  
18 government, county, and conservation groups, have  
19 purchased 98 percent of North Key Largo. And we  
20 consider North Key Largo basically the area from mile  
21 marker 106 up through Ocean Reef Club. So there is  
22 probably no reason to have the HCP at this point. In a  
23 conventional condemnation blight situation where there  
24 is an announcement of a project, a park, highway  
25 project, whatever, and the property values, some of the

1 property values go up, some down, depending on what the  
2 project is and whether they are going to benefit or not  
3 benefit from the project. Condemnation blight is fairly  
4 easy to apply and it's applied by having the appraisers  
5 disregard the effect of the project. In valuing the  
6 project as of the date of the taking as if the project  
7 had not interfered with the value. We have a situation  
8 where the project was the acquisition of North Key  
9 Largo. It was a project desired by the state and that  
10 project began in the late '70's and early '80's. And to  
11 facilitate that project Monroe County and these  
12 witnesses -- well Mr. Craig will testify that what was  
13 driving Monroe County, Monroe County adopted a series of  
14 rolling moratoria and finally a comprehensive plan and  
15 land development regulations that prevented construction  
16 and development on North Key Largo except in a handful  
17 of grandfathered subdivisions.

18 In this situation you can't just apply the -- it  
19 is not as simple as the simple project and short term of  
20 condemnation blight. The regulations have changed twice  
21 and there have been dramatic changes in the regulations.

22 MR. LEHRMAN: Excuse me, Your Honor. I don't mean  
23 to interrupt but if we are going into an opening  
24 statement at this point which it sounds like it --

25 THE COURT: I'll give you a chance to give an

1 opening statement.

2 MR. LEHRMAN: Okay. All right.

3 MR. MATTSON: In this situation the regulations  
4 have changed twice. There was a major change in 1986.  
5 There were -- there were moratoria prior to 1986. But  
6 the -- Monroe County's regulations prior to 1986 zoned  
7 this land general use which was a holding category. And  
8 it had been zoned general use since 1960 when we first  
9 had zoning in Monroe County.

10 In 1986 it was rezoned to native. Native was a  
11 very restrictive zoning category. And Mr. Craig will  
12 explain how restrictive it was. So that dramatically  
13 changed what you could do on the property. And then in  
14 1996 there were comprehensive plan changes which when  
15 they were finally adopted caused another reduction in  
16 density on North Key Largo. This lawsuit was filed in  
17 1995 so I don't believe 1996 regulations should have any  
18 effect.

19 So the issue is whether the appraisers in this  
20 case use the regulations that were in effect sometime  
21 between '86 and '96 which were, which did go through one  
22 change in '92, the rate of growth ordinance, or whether  
23 they are going to use the regulations in effect prior to  
24 1986 and if so whether they have to consider the  
25 moratorium. So it's a legal issue that needs to be

1 resolved by the court. It's not a fact issue to go to  
2 the jury.

3 The court needs to tell the parties what law  
4 applies for the purpose of the appraisal. Is it the law  
5 in effect in 1984, 1985, 1986, 1995? It's somewhere in  
6 that period. But defendant's position of course is that  
7 it's the law in effect on the date or the day before the  
8 first moratorium. The first moratorium was February 9,  
9 1982. So we would submit that the law to be applied is  
10 that in effect prior to February 9, 1982 or if that's  
11 not the case then it should be the law in effect prior  
12 to September 15, 1986 without regard for the moratorium  
13 because to the best of my knowledge unless someone  
14 testifies otherwise, and I don't think that's going to  
15 happen, the regulations were the same in '82 as they  
16 were up 'til September 15th, '86.

17 THE COURT: Thank you.

18 MR. LEHRMAN: Your Honor --

19 MR. TOBIN: Judge, I would like to make an  
20 opening, short opening since I'm representing UNCIA.

21 MR. MATTSON: That means I left something out.

22 MR. LEHRMAN: I feel like I'm being a little bit  
23 double teamed.

24 MR. TOBIN: I just filed a notice of appearance.

25 MR. LEHRMAN: As long as it is short.

1           MR. TOBIN: Yeah, I filed a notice of appearance  
2           on UNCIA. They have been bouncing around for a while.  
3           Judge, you asked what is the issue. The issue basically  
4           starts with Florida Statute 73.071 where the court is to  
5           exclude any increase or decrease based on knowledge  
6           known in the market and the, and the resolution that the  
7           board of trustees signs is generally a presumption, when  
8           they make the announcement that's the presumption, but  
9           it's not a fixed presumption. The issue in this case  
10          basically is whether or not there was deep involvement  
11          by the State of Florida in collaboration with Monroe  
12          County in enacting moratoria which started in 1982. And  
13          the case law basically says that ordinarily one agency  
14          is not tagged with another agency. You come in, you  
15          want to condemn something and what the zoning is is what  
16          the zoning is.

17                 But the case law from around the country, we have  
18          several cases which basically say where there is deep  
19          involvement, where they plan together, they fund  
20          together, they acquire together, they do all these  
21          things together that's sufficient to tag the condemning  
22          authority with the land -- with the actions of the other  
23          entity in depressing -- and depressing the value.

24                 In this particular case not only do we have deep  
25          involvement, we have actual pressure in the form of if

1 you don't do this we are going to do that. And that was  
2 a landmark date of February of 1983 when the governor --  
3 when the DCA went to the governor and the cabinet and  
4 asked them for permission to take over completely all of  
5 our zoning functions and to sue Monroe County in circuit  
6 court for an injunction so that if Monroe County did not  
7 do what the state wanted that the state would have the  
8 power of contempt to force the county to do what they  
9 want. So that's the deep involvement and that will  
10 basically be Mr. Craig's testimony.

11 Mr. Gallaher's testimony is basically, as the  
12 appraiser, is to look at the market and to show the  
13 court when the market absolutely collapsed. So  
14 that's --

15 THE COURT: Okay.

16 MR. TOBIN: -- what our case will show.

17 THE COURT: The date of valuation that you are  
18 seeking for on behalf of your client is?

19 MR. TOBIN: The date of valuation will be the  
20 regulations, the regulations in effect. And I'm just  
21 going to just quote one particular passage because I  
22 think -- this is from a case called Freeman, I'll give  
23 you the citation. This is a case where the local  
24 government, the county zoned the land and the state  
25 condemned. And the quote that I'm going to give you is

1 freezing the right-of-way property relied on -- this is  
2 a case that relied on Tallahassee Bank and Jim told you  
3 about Tallahassee Bank last time, but it basically says  
4 the property owner must be protected from the  
5 prejudicial evidence based on restrictions on the use of  
6 property, impressed as part of a design to freeze or  
7 depress value.

8           What happened was the court gave the instruction  
9 that you cannot admit evidence based upon the new  
10 zoning. And that's really what we are asking the court  
11 to do is say that because the zoning was frozen from  
12 1983 and it never became unfrozen because North Key  
13 Largo is still basically under a moratorium, we are  
14 asking you to instruct the state and the appraisers that  
15 the law or the zoning, it would be error, it would be  
16 prejudicial to allow the state to use today's zoning  
17 when they participated in freezing the zoning since 1983  
18 when the properties were zoned GU, which was a holding  
19 pattern of one unit per acre. Right now it's zero. And  
20 the state has sort of graciously agreed to use one unit  
21 per four acres which is the 1996 law in effect. They  
22 want to use the law in effect when they filed this  
23 condemnation action which is one unit per four acres.  
24 We are asking the court to apply the old GU which is  
25 pre-1986 zonings which the state had deep involvement

1 and froze the zoning until they could acquire the land.

2 That's really what we are hoping to --

3 MR. MATTSON: Andy.

4 MR. TOBIN: Yeah.

5 (Pause).

6 MR. TOBIN: Jim, why don't you answer that rather  
7 than me.

8 MR. MATTSON: Your Honor, you asked Mr. Tobin date  
9 of taking. Date of taking is fixed, is when the title  
10 transferred to the state that was --

11 THE COURT: I was asking for date of valuation.  
12 So you are asking for pre-1996 when the zoning was  
13 general zoning?

14 MR. MATTSON: Whatever the date is, I don't  
15 remember what it was, but it was in 2004. It needs to  
16 be valued as of that date but valued using the  
17 regulations in effect in pre-86 --

18 THE COURT: The value date was stipulated to if I  
19 recall correctly, right, the taking date?

20 MR. MATTSON: They put \$500,000 into the registry  
21 of the court. So they got title. That has to be the  
22 date of value. I presume they did that because at that  
23 time prices were going up like crazy so they decided  
24 they better do something.

25 THE COURT: State.

1           MR. LEHRMAN: Your Honor, in answer to your  
2 questions, first of all I'm not sure, because we do have  
3 a blending of arguments from the two counsel who, I just  
4 took a look at the notice of appearance, represent all  
5 of the parties in the case but nonetheless, both Mr.  
6 Mattson and Mr. Tobin have been blending the concept of  
7 an inverse condemnation taking with the concept of  
8 condemnation blight. The inability to fully answer the  
9 question as to when the date of taking is, appears to be  
10 a way to get around the very clear statutory language  
11 and in fact the stipulation of the parties which was  
12 signed by Your Honor approved of on April 7th, '03, that  
13 this -- there is nothing in the stipulation which  
14 changes the date of taking. According to the statute  
15 the date of taking is the date of valuation. It is the  
16 date upon which the property title will transfer.

17           There is, in addition to this law, a concept of  
18 blight which appears to be now a blended argument by  
19 opposing counsel with the issue of an inverse  
20 condemnation. If in fact this were an inverse  
21 condemnation, the date of the taking would be the date  
22 upon which the onerous, unreasonable and arbitrary  
23 regulations actually prevented the owners of the  
24 property from doing anything of benefit. That's the  
25 definition of an inverse taking.

1           In fact this case was filed with an inverse  
2 counterclaim by the defendants in this case and has been  
3 virtually abandoned. We have a motion to dismiss that,  
4 which is not before the court now. But in their motion  
5 and in their pleadings and in their conduct throughout  
6 the entire case the defendants in this case have been  
7 claiming that the property was taken somewhere around,  
8 between 1974 and 1984 or '5. There is no specific date  
9 put into their, into their claim but this is what they  
10 are claiming. If in fact this is true, that the  
11 properties were taken as of that date, the four year  
12 statute of limitations would have clearly run many, many  
13 years ago when these folks sat on their rights and did  
14 not do anything about these so-called moratoria, the  
15 area of critical state concern, the comprehensive plan,  
16 all of these regulations which they are now complaining  
17 of has taken away the rights of their properties.

18           So there are really two issues to be determined.  
19 The first is that this is in fact no inverse  
20 condemnation. Because even if these facts were to  
21 support it, and they do not, which we'll get into when  
22 that motion is called, the taking date would be as of  
23 the date the regulations went into effect which would be  
24 back in 1984.

25           And I don't think that upon further reflection the

1 defendants wanted that to actually be the taking date in  
2 this case because the property was certainly less  
3 valuable in the '80's than it would be today.

4 Now the other thing is this property is swamp land. It  
5 is mangrove swamp and not otherwise developable which we  
6 have also in the record. By the way, I do want to file  
7 the deposition of Nancy Linnan with the court. Make  
8 this part of the record.

9 Miss Linnan has testified in that deposition that  
10 she will be in Tallahassee and in fact is in Tallahassee  
11 as of this date, which is more than 50 miles from the  
12 courthouse. I will go through the deposition to  
13 establish her as an expert and she could not be present.

14 THE COURT: Thank you. You have your first  
15 witness?

16 MR. LEHRMAN: Judge, I'm not quite through.

17 THE COURT: I'm sorry, I thought you were.

18 MR. LEHRMAN: No, no that's just the first part.  
19 And I will be brief on the remainder but I believe that  
20 what we are going to hear from this witness is that the  
21 property is now worth less than it would have been if  
22 there had been no regulations in place at some previous  
23 time. That is not relevant. I object to the witness so  
24 testifying at this point. If the witness has testimony  
25 as to the actual blight of this property whether or not

1 he used the concept of blight, the appraisal concept of  
2 blight in valuing this property under Armadillo  
3 properties that may or may not be his right to do so.  
4 But it is certainly not his right to state that no other  
5 appraiser in the United States has the right to appraise  
6 property in any other way than as he has appraised it,  
7 which is being implied by the defendants, by saying that  
8 no other appraiser has ever done so differently. That's  
9 certainly not the case.

10 THE COURT: If that is the testimony then you will  
11 have the opportunity to object and I'll hear argument at  
12 that point.

13 MR. LEHRMAN: In that case why don't we go ahead  
14 and skip to the testimony. I reserve the closing  
15 argument to wrap this all together. But I do want, as  
16 the testimony goes through, to point out, number one,  
17 the testimony is going to be that Monroe County did  
18 certain things and that Monroe County's actions need to  
19 be imputed to the Department of Community Affairs which  
20 then needs to be imputed to the Department of  
21 Environmental Protection and that these things occurred  
22 around three decades ago and they are affecting the  
23 property today in a way where there should be additional  
24 compensation which is nowhere supported by any case law  
25 which I will argue at the appropriate time in my

1 closing. But in fact there is going to be no testimony  
2 that the Department of Environmental Protection did  
3 anything to pressure Monroe County into issuing these  
4 moratoria which may or may not have contributed to  
5 decline in the ability to develop wetlands.

6 THE COURT: Thank you. You may inquire from your  
7 witness.

8 DIRECT EXAMINATION

9 BY MR. MATTSON:

10 Q. Mr. Gallaher, please state your name for the record.

11 A. Bob Gallaher.

12 Q. What do you do for a living?

13 A. I'm a real estate appraiser predominantly.

14 Q. Where is your office?

15 A. In Miami, 7400 Southwest 50th Terrace.

16 Q. How long have you been a real estate appraiser?

17 A. More than 30 years.

18 THE COURT: Have you been sworn in?

19 THE WITNESS: No.

20 THE COURT: Raise your right hand, please.

21 BOB GALLAHER

22 having been first duly sworn testified upon his oath as  
23 follows:

24 THE WITNESS: Yes, I do. And all that I just said  
25 is true.

1 BY MR. MATTSON:

2 Q. Are you familiar with the values of property in the  
3 Florida Keys?

4 A. Generally speaking, yes.

5 Q. How did you acquire that familiarity?

6 A. I've appraised properties in the Keys for many, many  
7 years.

8 Q. What is your educational background?

9 A. I have a bachelor degree, University of Florida,  
10 major in real estate. After graduation I did professional  
11 courses leading to professional designation and then continuing  
12 education ever since then.

13 Q. What types of appraisal certifications do you have?

14 MR. LEHRMAN: Your Honor, for purposes of this  
15 hearing, and this hearing only, we would stipulate that  
16 this witness is an expert in the field of real estate  
17 appraisal.

18 THE COURT: Thank you.

19 BY MR. MATTSON:

20 Q. Mr. Gallaher, what was your assignment for today's  
21 hearing?

22 A. My assignment, the way I understood it, was to see if  
23 there was market evidence that a situation of condemnation  
24 blight or a diminished market was evident in the North Key  
25 Largo real estate market in the last 10 or 12 years.

1           MR. LEHRMAN: Your Honor, move to strike that on  
2           the basis of relevance. And may I have a continuing  
3           objection?

4           THE COURT: Objection is overruled. You have a  
5           continuing objection.

6           MR. LEHRMAN: Thank you, sir.

7 BY MR. MATTSON:

8           Q. How did you go about carrying out your assignment?

9           A. I have three results, three analyses. One is a  
10          review of market transactions in the area, volume of  
11          transactions. One is a recapping of the appraisals that I have  
12          seen in various cases over the last ten, fifteen years  
13          regarding property in North Key Largo and also I have  
14          interviews with property owners that sold property in North Key  
15          Largo and their testimony as to what their experience was in  
16          trying to market property.

17          Q. For the first part of your research what did you use  
18          as a source of data?

19          A. Based on the Monroe County tax database, the property  
20          appraiser's database.

21          Q. What is that database, describe it for the court?

22          A. It's a summary of every single parcel in Monroe  
23          County that is used as the basis of the ad valorem taxes for  
24          the county, describes every property as to size, ownership, its  
25          zoning, its use and the property appraiser's office keeping a

1 running summary of sales transactions on each parcel.

2 Q. Is it possible to identify sales transactions and  
3 distinguish them in mortgages or quitclaim deeds?

4 A. It is generally speaking, yes.

5 Q. How accurate is the property appraiser's database?

6 A. Historically I found it to be very accurate, the data  
7 is correct. You could check the OR books that they show and  
8 you verify them against actual documents. There is a very,  
9 very high probability that those OR books apply to that  
10 property. In fact I don't ever recall finding one that was  
11 incorrect.

12 Q. Were you able to determine how much of north -- well  
13 you heard my opening statement where I opined North Key Largo  
14 from mile marker 106 to Ocean Reef Club, is that the boundary  
15 you chose?

16 A. Yes, sir; north of 905, US 1 split. Circle K up to  
17 the entrance of Ocean Reef.

18 Q. Approximately how many parcels are there?

19 A. It seems like there are about 1100, as I recall.

20 Q. About how many acres are there then?

21 A. I don't recall an acres number.

22 Q. Is that land all owned by government and conservation  
23 organizations at this time?

24 A. As of today almost all of it is, all but about two  
25 percent of it.

1 Q. Do you have an analysis of when and how much the  
2 government bought?

3 A. Yes, I do. That analysis is summarized on two graphs  
4 that I would like to show the court.

5 THE COURT: Have they been shown to opposing  
6 counsel?

7 MR. LEHRMAN: I have not seen them, Your Honor.

8 THE COURT: Do you have a copy for opposing  
9 counsel?

10 MR. MATTSON: Actually I don't. You have the only  
11 copies. Can I just show him your copy?

12 THE COURT: Sure. I was going to give you one.

13 BY MR. MATTSON:

14 Q. While counsel is looking at the charts can you  
15 explain how you produced the charts or how the charts were  
16 produced?

17 A. Yes. Through computer software.

18 THE COURT: One second.

19 THE WITNESS: Sure. Actually it would be helpful  
20 to start the testimony with the exhibit that counsel has  
21 in his hands so I'll just wait.

22 MR. LEHRMAN: Your Honor, we would object to these  
23 exhibits. Once again this testimony goes towards what  
24 this witness did in order to value the property  
25 regarding his conclusion that there is a reason to use

1 the theory of condemnation blight on these properties  
2 when that is purely a legal issue and has nothing to do  
3 with how this witness appraised the properties.

4 THE COURT: Response.

5 MR. MATTSON: First of all he hasn't even  
6 mentioned that he was hired to do an appraisal today.  
7 And he has indicated that his assignment was to  
8 determine whether or not there is evidence of  
9 condemnation blight on North Key Largo.

10 THE COURT: Objection is overruled.

11 BY MR. MATTSON:

12 Q. I'm handing you back the document that Mr. Lehrman  
13 had in his hand which you said was the better way to start your  
14 discussion.

15 A. Yes, sir. Thank you. This is an aerial photograph  
16 of the North Key Largo area. It is possible through GIS  
17 programs and software to line out, by this yellow line, the  
18 North Key Largo geography and then to take out Ocean Reef,  
19 which is also surrounded by a definite line here, sort of an  
20 orange color. And by doing that to take everything else that  
21 is in that area and overlay it over the tax database. So we  
22 can essentially describe this by lines. And then say show me  
23 every parcel in this area and that's what we did. By taking  
24 all of those parcels in these geography we then can isolate the  
25 data that comes from the tax record on each of those parcels

1 line by line.

2 Having done that --

3 THE COURT: Are you going to move that into  
4 evidence and have it marked for the record?

5 MR. MATTSON: Yes, I would like to move that into  
6 evidence as defendant's exhibit 1.

7 MR. LEHRMAN: Same objection Your Honor.

8 THE COURT: Overruled. Be admitted as defense  
9 exhibit number 1.

10 MR. MATTSON: Hand it to the clerk.

11 (Defendant's received in Evidence #1)

12 BY MR. MATTSON:

13 Q. Go ahead Mr. Gallaher.

14 A. We then looked at how many of those transactions were  
15 eventually to the government, how many of the parcels in that  
16 geography were acquired by the government be it the state or  
17 the county. Then we did a chart showing how many sales  
18 transactions there were and how much acreage the government had  
19 acquired in North Key Largo. That is what this first draft  
20 does. It's a bar graph with a line graph behind it. And the  
21 blue bars on this graph are showing the number of transactions  
22 year by year from 1980 at the left to 2005 at the right. How  
23 many transactions year by year where the government was  
24 acquiring parcels of real estate on North Key Largo.

25 The line graph behind it which is shaded and

1 cross-hatched red to make it stand out shows the amount of  
2 acreage that was acquired in those same years. We have the two  
3 graphs. It tended to follow in these two years 1984, 1990  
4 there were spikes in the number of parcels that were closed.  
5 And there is a corresponding spike in the number of acreage  
6 that were closed. Then we took all of that data and produced  
7 another graph. This one shows in the blue cross-hatching the  
8 cumulative total of the acreage owned by the government on  
9 North Key Largo. The court can see it starts out fairly low  
10 and increases through the years from again this same scale of  
11 years, 1960 to 2005, it steadily increases over the years to  
12 the point wherein 2005 the government owns 98 percent of the  
13 parcels on North Key Largo. That was our first step to see how  
14 the acquisitions went.

15           Also on this graph and these sort of brownish red bar  
16 graph is the amount of transactions between individuals over  
17 that same time period which we would generally assume to be  
18 market transactions. So we look at the transactions applying  
19 to real estate parcels in that same market area and you can  
20 see, absent this one spike in 1965, that this is a general  
21 trend. There is activity prior to 1970, 1970 being at this  
22 point where I'm pointing. Then there is a general decline 'til  
23 '74.

24           Then there is another decline as we go down into  
25 1986. 1986 there were three transactions. And from then on

1 there are none. You can have that correspond, if you can  
2 visualize, these low bar graphs, they are still -- all the area  
3 between the line and the top of the graph is still privately  
4 owned property. So we take this last year of activity which is  
5 1986 and run the line up, then we come over to 60 percent.  
6 That shows that still 40 percent of the property in North Key  
7 Largo was owned privately. But thereafter there are no  
8 transactions. And actually we looked at those last three  
9 transactions and found that two of them were an individual to a  
10 partnership, which they control. One was to an adjoining  
11 owner. So we could argue those would go away but that would be  
12 unfair to analyze all of these. We see this absent trend of  
13 down to no transactions on the open market to individuals, to  
14 steady acquisition of property by the government. We get this  
15 cross somewhere in middle here around 1980, '82, '84 where  
16 there is clearly a change in the market conditions that we  
17 would point to and say that's the evidence based on the  
18 publicized actions of the state, publicized actions of the  
19 county, that the market has learned there is no point in buying  
20 land in North Key Largo because you are not going to develop  
21 it. So this nexus here is a point where condemnation blight  
22 has occurred, statistically.

23 The second phase of it --

24 MR. MATTSON: I would like to move those in as  
25 defendant's 2 and 3, Your Honor.

1                   MR. LEHRMAN: Your Honor, now I do. Based on the  
2 testimony it's clear that and I do have an objection,  
3 that it is clear that this witness is testifying that  
4 there is blight. But it certainly appears from his  
5 testimony that the reason that there is blight is  
6 because the government has created an abnormal market  
7 through the purchase of all of these properties not  
8 through over regulation or moratoria which is what we  
9 are here for today. Based on that also this witness is  
10 going to so testify, I would object on the basis of  
11 relevance that this witness's testimony goes to an  
12 abnormal market of blight, which we do not object to him  
13 testifying to if this is what he's come to based on the  
14 fact that the government has made an abnormal market  
15 through these purchases to create an environmental  
16 protection area, that unless this witness is ready to  
17 testify that those governmental acquisitions occurred  
18 because there is in fact over regulation or the  
19 moratoria that was in place by the city of Key West and  
20 Monroe County or whoever put it in, certainly not us,  
21 then it's not relevant.

22                   THE COURT: Response.

23                   MR. MATTSON: These are data that this gentleman  
24 is qualified to testify to, that he's responsible for  
25 and that show that the market in North Key Largo dried

1 up in --

2 THE COURT: That's what I took his testimony to

3 be, nothing more than that. Objection is overruled.

4 Exhibits are in evidence, exhibit 2 and 3.

5 (Defendant's marked for Identification #2 & 3)

6 THE WITNESS: That would be 2 and that would be 3.

7 MR. MATTSON: Top one is 2.

8 MR. TOBIN: Judge, could we substitute the smaller  
9 copies at some later time with permission of counsel?

10 THE COURT: Yes.

11 MR. TOBIN: Paul?

12 MR. LEHRMAN: If I can get a copy.

13 MR. MATTSON: They are a little hard to read.

14 MR. LEHRMAN: This actually isn't really a copy.  
15 That is all blended together. You can't really read it.

16 MR. MATTSON: The problem when you print them  
17 small there is so much data on there they can run  
18 together. We can provide full size copies.

19 THE COURT: Thank you.

20 MR. LEHRMAN: Thank you, sir.

21 BY MR. MATTSON:

22 Q. The second part of your assignment?

23 A. Second phase of my investigation was to check the  
24 available appraisals that I had access to see what other  
25 appraisers, what my peers are doing in the marketplace in terms

1 of their investigations. And --

2 MR. LEHRMAN: Objection, Your Honor. An expert  
3 witness cannot rely upon the opinions of other experts  
4 in order to bolster his own credibility. And that  
5 apparently is what this witness is trying to do.

6 THE COURT: An expert can rely on other expert  
7 testimony to come to his own conclusion and use that in  
8 coming up with his own opinion if that is what he's  
9 doing.

10 MR. LEHRMAN: There is no testimony. He's talking  
11 about hearsay, not gathering facts. He is talking about  
12 getting the opinions of other appraisers and using those  
13 opinions rather than fact to bolster his testimony.

14 THE COURT: I didn't get that from his testimony.  
15 Continue with your questioning. At this point your  
16 objection is overruled.

17 THE WITNESS: We looked at other appraisals to see  
18 what peers are doing in terms of their investigations.  
19 One of the rules under USPAP is you do your scope of  
20 work under guidelines that you create. But one of the  
21 tests which are proper what peers would do, reading my  
22 peers' reports I find out --

23 MR. LEHRMAN: Objection, Your Honor. That is the  
24 specific objection. He's looking at his peers' opinions  
25 and he wants to relate to the court what those opinions

1 are in order to bolster his testimony which is clearly  
2 unpermitted.

3 THE COURT: Overruled.

4 THE WITNESS: I wasn't looking to the appraisals  
5 to see what their opinions of value were. I was looking  
6 to see their methodology. In each case, in every case  
7 the method of valuation is the comparable sales approach  
8 which would be expected. But in every case they have  
9 gone away from North Key Largo for the comparable sales.  
10 They have gone down into the other parts of the Keys  
11 where there is sales activity, areas not impacted by  
12 this condemnation blight for their market data.

13 There are one or two sales used of improved lots  
14 on North Key Largo as an exception. But generally the  
15 appraisals I have read have been using sales from other  
16 areas other than the subject area which would be  
17 atypical except when there is condemnation blight. And  
18 it's appropriate. And those appraisals come from  
19 appraisals done for property owners and appraisals done  
20 for the state or for the county. That's the second  
21 prong.

22 The third approach was to interview individuals  
23 who had been involved in transactions that were reported  
24 to me as being arms length negotiated sales between  
25 individuals and the State of Florida. And in those

1 cases I talked to individuals who reported to me that  
2 yes they -- they were arms length not related to the  
3 state. Yes, they were negotiated. However they were  
4 not under normal circumstances. They were certainly  
5 under duress.

6 MR. LEHRMAN: I object this being impermissible  
7 hearsay on the part of this witness.

8 MR. MATTSON: Your Honor, he's an expert witness.  
9 He's entitled to rely on hearsay. And he's talking --  
10 it's perfectly admissible as part of his expert opinion.

11 THE COURT: Well he's talking to other sellers.

12 MR. MATTSON: That's what appraisers do.

13 MR. TOBIN: That's how they verify other sales.

14 THE COURT: Comparing other properties I certainly  
15 understand you look for comparables but the actual  
16 looking for others, for interviewing other sellers and  
17 buyers has not been testified to by this witness this is  
18 something that is done, that a normal expert would do in  
19 this area to gain this information.

20 MR. MATTSON: May I lay a predicate?

21 THE COURT: If you lay a predicate I may allow it.

22 MR. LEHRMAN: Your Honor, I really do feel like  
23 I'm being double teamed here. I would ask that the  
24 court direct counsel, who are representing all of the  
25 parties, to have one spokesman.

1           THE COURT: Why don't we clear that up now. Are  
2 you all representing -- are both of you representing all  
3 the defendants or Mr. Tobin are you representing UNCIA  
4 today?

5           MR. MATTSON: I think Mr. Tobin was hired to  
6 represent UNCIA because their counsel and I didn't get  
7 along. What can I say.

8           MR. TOBIN: Technically judge on the record UNCIA,  
9 I was retained to represent UNCIA. From a practical  
10 standpoint, as you know Jim and I work together on these  
11 cases. It's not my intention to repeat everything that  
12 is done and I'm not trying to be cumulative but this is  
13 a complicated case and there are going to be times when  
14 I have an opinion which is a little bit different from  
15 Jim. And I will try not to double team Paul but  
16 certainly these are complicated issues and this is an  
17 important decision.

18           THE COURT: An argument of evidence, if the  
19 attorney who is questioning the witness or involved with  
20 the witness, if that attorney will take care of the  
21 arguments so we don't have a double deeming.

22           MR. MATTSON: We'll do that. You will notice that  
23 Mr. Tobin and I never sit down without checking with the  
24 other.

25           THE COURT: Right.

1           MR. MATTSON: So we have ways of getting this  
2           across.

3           THE COURT: Let's continue.

4           BY MR. MATTSON:

5           Q.     Mr. Gallaher, when you are doing an appraisal, either  
6           for governmental or a land owner, how do you verify sales?

7           A.     Verification process consists of confirming that the  
8           transaction occurred. First of all that is done usually  
9           through public records, acquiring a copy of the deed itself,  
10          the deed instrument and then to determine the circumstances of  
11          the sale. Was it arms length between informed parties? Does  
12          the sale meet the test of market value, the five tests of  
13          market value? The only way to do that is to speak to somebody  
14          related to the sale. The easiest one to find in the  
15          transaction is an attorney, because his name is stamped on the  
16          deed some place. More importantly it is better to talk to a  
17          seller or buyer to find out what was in their head, were they  
18          coerced? Did they do something personally that they had to  
19          sell quickly? Was it an auction? What were the circumstances  
20          of the sale, that we can measure it against the five step  
21          definition of market value. Informed, plenty of time, cash,  
22          all the typical -- the definition of market value. So  
23          typically we try to speak to somebody. In this case I was able  
24          to find sellers who were the sellers to the state --

25          Q.     Let me ask a question. Have you begun an appraisal

1 of the properties involved in this case?

2 A. Yes, I have begun one.

3 Q. Have you arrived at a decision?

4 A. Only very preliminary ranges.

5 Q. Have you started the process of confirming the sales  
6 in this case?

7 A. Yes.

8 Q. Have you done work for other attorneys who were  
9 involved with eminent domain cases in the Keys?

10 A. Yes, I have.

11 Q. Have you done work for both sides or just for  
12 government or just for property owners?

13 A. In North Key Largo I have only worked for property  
14 owners.

15 Q. And in your function as the appraiser for those  
16 property owners, have you had the occasion to verify sales?

17 A. Yes, I have.

18 Q. Are sales from private individuals to government for  
19 any reason normally suspect or normally not suspect?

20 A. I don't understand your question.

21 Q. All right. Would a sale -- if a sale on North Key  
22 Largo is reported as a sale from Mr. Smith to the United  
23 States, would you take that meeting the definitions of market  
24 value without further inquiry,

25 A. No not on spec.

1 Q. Why not?

2 A. For one thing it might have been the result of an  
3 eminent domain case. It might have been a taking in which case  
4 that would not be appropriate. Or it might be a case where the  
5 property owner had to sell and the government was willing to  
6 buy and so there was time pressure to do it quickly because  
7 they had financial issues. So therefore it wouldn't meet  
8 market value. It could be a variety of reasons why sales won't  
9 meet market value just because it's a deed recorded in the  
10 courthouse.

11 Q. Do you do a verification of the other side's  
12 comparable sales?

13 A. What do you mean by other side?

14 Q. Your adversary?

15 A. In a court case?

16 Q. Yes.

17 A. Sometimes.

18 Q. Has your adversary always been the government in  
19 North Key Largo?

20 A. In North Key Largo to the best of my recollection,  
21 yes.

22 Q. Have the appraisers for the government ever used  
23 sales from individuals to the government as comparable sales?

24 MR. LEHRMAN: Your Honor, this would be the same  
25 objection. The witness will be testifying as to the

1           opinions and conclusions of other experts not his own  
2           opinion and conclusion.

3                   THE COURT: I think the predicate has been set.  
4           Your objection is overruled.

5                   THE WITNESS: I would like you to repeat the  
6           question, please.

7 BY MR. MATTSON:

8           Q.     Have you ever had occasion where your counter part on  
9           the government's side, your counter part appraiser, has  
10          prepared an appraisal using sales from private individuals to  
11          government as comparable sales?

12          A.     Yes, I have.

13          Q.     And did you ever have occasion to question those  
14          comparables?

15          A.     Yes. In one particular circumstance as I recall,  
16          yes.

17          Q.     And how did you go about checking those comparables?

18          A.     I spoke to the sellers.

19          Q.     And what did you find out?

20                   MR. LEHRMAN: Your Honor, I object. We don't know  
21          if this comparable is in North Key Largo, what it has to  
22          do with the property.

23                   THE COURT: Clarify it, please.

24 BY MR. MATTSON:

25          Q.     Were all of these transactions in North Key Largo?

1 A. Yes, they were.

2 Q. Who was your client?

3 A. My client was an attorney by the name of Brian  
4 Patchen out of Miami-Dade County.

5 Q. Do you know who the land owner was?

6 A. His client was Elaine Monroe.

7 Q. And in that instance were there sales of North Key  
8 Largo property to the government that were presented to you as  
9 comparable sales?

10 A. Yes, there were.

11 Q. Did you investigate those comparable sales?

12 A. Yes, I did.

13 MR. LEHRMAN: Objection on the basis of relevance  
14 as to what this has to do with the North Key Largo  
15 property we are talking about. It's so far afield that  
16 I must object on the basis of relevance.

17 THE COURT: Mr. Mattson, we are talking about  
18 another property, another lawsuit or different lawsuit,  
19 correct and how he verified valuation as to that  
20 property? Aren't we a little bit far afield here?

21 MR. MATTSON: The issue here is whether or not  
22 appraisers, professionals in this business valuing  
23 property in North Key Largo would use North Key Largo  
24 sales as comparable sales. If they would not then there  
25 is a reason why they would not and that reason, we

1 submit, is because North Key Largo properties are  
2 infected with condemnation blight. These are not arms  
3 length sales --

4 THE COURT: You get to that opinion because he  
5 called sellers and buyers and verified it. That's why I  
6 previously stated when there was an objection you lay  
7 the predicate you can now get into that opinion. You're  
8 fine, you set the foundation.

9 MR. MATTSON: All right.

10 BY MR. MATTSON:

11 Q. Mr. Gallaher --

12 A. Yes, sir.

13 Q. -- in your opinion, do appraisers of properties in  
14 North Key Largo rely on sales of North Key Largo property,  
15 whether they are private sales or sales to government as  
16 meeting the test of market value?

17 A. No they don't, not generally.

18 Q. And what do they rely on?

19 A. They rely on sales from outside of North Key Largo  
20 where there is an active market not subject to condemnation  
21 blight.

22 Q. In all of the cases where you have represented people  
23 either -- well you only represent property owners on North Key  
24 Largo -- has any appraisal ever been offered to the court that  
25 was based on North Key Largo comparables?



1 He's already given it. It's asked and answered.

2 THE COURT: If it's fact he used in arriving at  
3 his opinion then I'm going to allow it.

4 BY MR. MATTSON:

5 Q. Now you can answer the question.

6 A. I did speak to sellers. The ones that I spoke to  
7 uniformly described a market in which they could not sell their  
8 property on the open market. The state was pressuring them to  
9 sell to the state. The state was threatening them. They used  
10 a variety of words that showed it's not a market value  
11 transaction, that the price would not meet the test of market  
12 value and; therefore, the data points to a conclusion it was a  
13 case of condemnation blight.

14 MR. LEHRMAN: Objection, Your Honor. Move to  
15 strike the term threats as being --

16 THE COURT: Overruled. Let's move on to the  
17 next --

18 BY MR. MATTSON:

19 Q. The third part of your assignment?

20 A. That was the third part. I had three parts. I had  
21 the statistics. I had the other appraisers, my peers'  
22 methodology. And interviews with property owners. So that  
23 brings me to my conclusion.

24 Q. What is your conclusion?

25 A. My conclusion is, based on all of what I just said,

1 that the North Key Largo market is not a market in which normal  
2 transactions occur and that there is a condition that would be  
3 described as condemnation blight and that it occurred sometime  
4 in the early to mid 1980's.

5 MR. MATTSON: Thank you. No further questions.

6 Wait, I have a further question -- I am finished. Thank  
7 you.

8 THE COURT: Cross examination.

9 MR. LEHRMAN: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. LEHRMAN:

12 Q. Good afternoon, sir. I don't think we have ever met  
13 before.

14 A. No, we haven't.

15 Q. It's good to meet you. Mr. Gallaher, is that your  
16 name?

17 A. Yes, sir, Gallaher.

18 Q. You have made a conclusion that the North Key Largo  
19 market from the mid 1980's on was an abnormal market not to be  
20 relied upon in bringing up comparable sales?

21 A. I said early to mid 1980's but yes.

22 Q. So when you are looking for a comparable sale you  
23 wouldn't look in North Key Largo because the market is  
24 abnormal?

25 A. That's generally correct, yes.

1 Q. What was causing this market to be abnormal; was it  
2 the government's purchase of all of these properties?

3 A. That was part of it, yes.

4 Q. Was it due to environmental regulation?

5 A. That was part of it.

6 Q. Describe what environmental regulation was in place  
7 in North Key Largo that is not in place in the rest of the  
8 Keys?

9 MR. MATTSON: Your Honor, beyond the scope of  
10 direct.

11 THE COURT: Overruled.

12 THE WITNESS: I can't point to any specific  
13 environmental regulation. The State of Florida had  
14 been -- had declared the area an area of critical state  
15 concern but that was for all of Monroe County. And  
16 there was some alarm about development occurring on  
17 North Key Largo. And there were some newspaper articles  
18 that described efforts to curtail development. But I  
19 can't tell you specific environmental rules that were in  
20 place.

21 MR. LEHRMAN: Move to strike the answer regarding  
22 newspaper articles. That was nonresponsive.

23 THE COURT: Overruled.

24 BY MR. LEHRMAN:

25 Q. Was the date the environmental regulations went into

1 effect and affected the market, what date was that?

2 A. I just said I can't point to specific environmental  
3 regulations. If I could point to one I would have the date to  
4 tie to it. But the general efforts of the State of Florida in  
5 conjunction with Monroe County to stop development occurred  
6 back in those same time periods.

7 Q. You are a member of the institute are you?

8 A. I'm a member of the appraisers institute yes.

9 Q. Is it your opinion that USPAP permits you to look at  
10 environmental regulations which applies uniformly throughout  
11 Monroe County as being a cause of blight absent any other  
12 factors?

13 A. I don't think USPAP speaks to that issue.

14 Q. Do you believe that USPAP -- USPAP does speak to  
15 blight, does it not?

16 A. No, it does not.

17 Q. Do your standards of appraisal speak to blight?

18 A. Not specifically.

19 Q. How do you make a determination as to whether or not  
20 blight applies in doing your appraisals as you just described?

21 A. Well, whenever I have a case in an area that is under  
22 the threat of condemnation there is -- one of the first things  
23 we look at is can we use sales from that specific area in our  
24 market investigation. Because certainly as everybody realizes,  
25 the sales around the subject property, in most typical markets,

1 are the best indicators of the value of that property.

2 But if we have a situation where government  
3 regulation or government policies have impacted the use of  
4 property in a specific area then it's right to go to other  
5 areas to find your sales for a comparison rather than the area  
6 of the subject property.

7 Q. This blue area on exhibit 3 indicates the -- what is  
8 that, the acreage?

9 A. That is the percentage of acreage owned by the  
10 government.

11 Q. And it appears where this starts to spike up that's  
12 approximately where you found the blight to begin; is that  
13 correct?

14 A. That's the general area, yes. That's what I  
15 testified.

16 Q. And when we take a look at these sales, this creates  
17 an abnormal market because of governmental purchases of these  
18 properties?

19 A. No. As I pointed out in my testimony earlier, at the  
20 point where you see the market transactions decline represented  
21 by the dark bar graph on the exhibit in your hand, they  
22 declined before the government reaches a point where they had  
23 70 or 80 percent of the market. At the point of the last sale  
24 or two they only owned 60 percent of the market which leaves 40  
25 percent available for market transactions and yet there are

1 none at all.

2 Q. What years are we talking about there, sir?

3 A. 1984, '85. '83 there was only seven acres. So early  
4 to mid 1980's.

5 Q. Is there anything specifically on this graph or on  
6 the graph behind it, exhibit 2, which shows what environmental  
7 regulation impacted as opposed to governmental purchases of  
8 properties?

9 A. No, it does not.

10 Q. Can you quantify the difference if in fact there is  
11 one?

12 A. The difference between what?

13 Q. What constitutes a governmental purchase of the  
14 property and what constitutes environmental -- abnormal market  
15 due to environmental factors?

16 A. Can I quantify the differences between market  
17 purchases and abnormal --

18 Q. Yes. If there were 100 sales, what percentage of  
19 those sales would have been due to environmental purposes and  
20 what -- in order for you to come to your conclusion that this  
21 is an abnormal market versus what percentage would be due to  
22 the government purchasing the property causing it to be an  
23 abnormal market?

24 A. If I understand your question, you're suggesting that  
25 there may be a decline in the number of sales due to just the

1 fact of the environment?

2 Q. No, no. Let me start fresh.

3 A. I'm sorry. I'm not understanding.

4 Q. That last question should have been taken up and  
5 shot.

6 A. Okay.

7 Q. Let me start fresh.

8 A. Good.

9 Q. You have stated that this is an abnormal market so  
10 you have gone outside of this area to find sales which would  
11 be, in your opinion, comparable.

12 A. No. I said that it's an abnormal market that other  
13 appraisers have. And the fact that they have all done that, as  
14 well as I have as well, that all of that together combined with  
15 statistics, combined with the interviews, all of that together  
16 tells me it's an abnormal market.

17 Q. As a result of the abnormal market you consider this  
18 area to be blighted and you have to go elsewhere to find comps?

19 A. Yes.

20 Q. It's an abnormal market due to governmental purchase,  
21 you stated that the government is buying the majority of these  
22 properties out there for conservation; is that correct?

23 A. No. I said at the points of that graph where the  
24 blight seems to become evident is a point where there is still  
25 plenty of parcels for individuals to transact, to sell on the

1 market, there is this trend towards the government acquiring  
2 it. And certainly if you look at the right-hand side of  
3 exhibit 3 graph where the government owns 90, 95, 98 percent  
4 you wouldn't expect to see transactions there because they own  
5 everything. It is further back where they own 40, and 50 and  
6 60 percent where you expect to see market activity but you see  
7 none.

8 And the reason of that is that the government has  
9 stated we are going to acquire, they stated you are not going  
10 to develop it, don't buy it, don't sell it, don't rezone it, we  
11 are coming, just stand by. So you can't use sales in an  
12 environment like that. That's what I'm trying to say.

13 Q. So these were sales of property under threat of  
14 condemnation?

15 A. No because the sales we are talking about where I  
16 interviewed the sellers, they weren't threatened with it. They  
17 were told you are not going to sell your property, some day we  
18 are going to buy it, some day you are going to cave and we are  
19 going to buy it.

20 Q. The absence of sales is as a result of the threat of  
21 condemnation?

22 A. Yes.

23 Q. What was the year that the government actually began  
24 taking property in North Key Largo by eminent domain?

25 A. I don't know.

1 Q. Would it have been in the 80's?

2 A. I think they took eminent domain property back there  
3 before the 80's.

4 MR. LEHRMAN: Thank you, sir.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MR. MATTSON:

8 Q. Mr. Gallaher, are you familiar with the concept of  
9 moratoria?

10 A. Yes.

11 Q. Do you happen to know whether Monroe County adopted  
12 any moratoria on development on North Key Largo in the 1980's?

13 MR. LEHRMAN: Your Honor, this is beyond the  
14 scope. If counsel is permitted to go into this I would  
15 also like to cross examine.

16 THE COURT: I will allow you to get into that.

17 THE WITNESS: Yes, they did enact moratoria.

18 Q. Do moratoria affect demand?

19 A. Yes.

20 Q. How do they affect demand?

21 A. If moratoria is in effect one can't develop property.  
22 They are less likely to buy it.

23 Q. Are you familiar with the dates and the language of  
24 the Monroe County moratoria?

25 A. I'm not familiar with the specific language. I'm

1 familiar with the dates when they began and ended, yes.

2 Q. When did they begin?

3 A. The first ones related to this area were in February  
4 of 1982.

5 Q. When did they end?

6 A. The last one is apparently -- were lifted in  
7 September of 1986.

8 Q. Is that the date that Monroe County's comprehensive  
9 plan was approved?

10 A. I believe it was.

11 Q. Did the comprehensive plan include a moratorium on  
12 development in North Key Largo?

13 A. I believe it did.

14 Q. Is that moratorium still in effect, to your  
15 knowledge?

16 A. I believe it is.

17 Q. Could those moratoria have been responsible for the  
18 killing of this market?

19 A. Well certainly when the market perceives a condition  
20 of rolling moratoria, we have seen it in other markets as well,  
21 that after a while the market gives up and says you are just  
22 prolonging this until you find a way to kill it permanently.  
23 So either we'll wait until you reallow development or we'll  
24 just go to the market. They get the message.

25 Q. Mr. Lehrman asked you --

1 MR. LEHRMAN: Lehrman.

2 MR. MATTSON: I'm sorry.

3 MR. LEHRMAN: That's okay.

4 Q. Mr. Lehrman asked you if you were familiar with  
5 environmental regulations that affected this market. Were you  
6 aware of any environmental regulations that could have caused  
7 this collapse of the market?

8 A. I can't relate one to you specifically sitting here.

9 Q. From what you know about the moratoria on North Key  
10 Largo from 1982 'til today, in your opinion were those  
11 moratoria responsible for collapsing this market?

12 A. They certainly contributed, yes.

13 Q. How much did they contribute?

14 A. It's part of the overall market knowledge. I mean  
15 government says you are not going to build, the county is  
16 enacting moratoria. They all relate. One 80 percent  
17 responsible or one 20, I don't know. They are all responsible.  
18 They all contribute to creating a market that is not normal.

19 MR. MATTSON: Thank you. No further questions.

20 THE COURT: You may get into this area.

21 MR. LEHRMAN: Thank you, sir.

22 RE CROSS EXAMINATION

23 BY MR. LEHRMAN:

24 Q. Mr. Gallaher, who enacted this moratoria?

25 A. The county.

1 Q. Monroe County, right?

2 A. Yes, sir.

3 Q. And when did the moratoria begin to affect the market  
4 in North Key Largo?

5 A. Well, based on the graph and based on the interviews  
6 and based on the dates of what I see it looks like it was the  
7 1982, '83 time period, it was certainly beginning to have an  
8 impact. The first moratoria -- first moratorium was only for  
9 90 days. Where we have seen moratoriums occur before you get a  
10 90 day moratorium, the government adopts some regulation that  
11 fixes some things they were trying to fix, it is lifted and  
12 back to normal. But a 90 day and 55 days and 90 day, etcetera,  
13 etcetera, etcetera, after all, the market gives up. We saw on  
14 South Beach many years ago the market gave up. It was a six  
15 month moratorium that was extended and extended and it lasted  
16 10 years. The market gave up after a while.

17 Q. When did the moratoria and crash in price affect the  
18 subject parcel that we are about here today?

19 A. Same time it affected the market in general, we are  
20 part of that market.

21 Q. Doing your research on the subject parcel, did you  
22 come across any development applications, any applications to  
23 subdivide or otherwise develop this property?

24 A. I have not investigated that yet.

25 MR. LEHRMAN: Thank you, sir.

1 THE WITNESS: Thank you.

2 THE COURT: You may step down. Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Call your next witness, please.

5 MR. MATTSON: Defendants call Donald Craig.

6 DONALD L. CRAIG

7 having been first duly sworn testified upon his oath as  
8 follows:

9 THE WITNESS: I do.

10 DIRECT EXAMINATION

11 BY MR. MATTSON:

12 Q. Please state your name for the record.

13 A. Donald L. Craig.

14 Q. Mr. Craig, what do you do for a living?

15 A. I'm a consulting planner in the city of Key West,  
16 Florida.

17 Q. And what is your educational and experience  
18 background?

19 A. I'm a graduate of the University of California at Los  
20 Angeles with a degree in history. I am a graduate of Michigan  
21 State University with a degree in urban and regional planning.  
22 I have advanced course work at the University of California of  
23 Berkley. I am a fellow of the institute for local self  
24 government. I have additional course work at Stanford  
25 University. I am a founding charter member of the American

1 Institute of Certified Planners. I'm a founding member of the  
2 American Institute of Environmental Professionals. I'm a  
3 founding member of the resort and tourism division of the  
4 American Planning Association. I have been a planning director  
5 in three jurisdictions, Summit County, Colorado; Monroe County;  
6 Lee County, Florida. I am, until this year, a four year member  
7 of the historic and architectural review commission in the city  
8 of Key West.

9 I have also been assistant county administrator in  
10 Monroe County for growth management in charge of planning,  
11 environmental resources, building, parks and recreation. I  
12 have been a consulting planner in Monroe County since 1990  
13 having worked on many, many projects, both public and private,  
14 acting as an expert witness for both the public entities and  
15 private entities. I maintain an office of five professionals  
16 in the city of Key West who work in each jurisdiction within  
17 Monroe County, developing projects, processing applications,  
18 writing ordinances for cities and the county. That's it.

19 Q. That's all?

20 A. That's all.

21 Q. What was your assignment for today's hearing?

22 A. My assignment was quite broad. It was to not only  
23 draw up on my experience as planner in Monroe County from  
24 September 15th, 1987 until February 1990 and my direct  
25 involvement in the implementation of the Monroe County

1 comprehensive plan land development regulations but to also  
2 review the history of the application of moratoria in North Key  
3 Largo, the attempts to adopt a habitat conservation plan for  
4 North Key Largo and the affects of the application of those  
5 moratoria on the ability to develop land within North Key Largo  
6 and to analyze the development capability of the parcel in  
7 question, the West property, and to determine what could have  
8 occurred in the -- with the previous regulations prior to 1986  
9 and those following 1986.

10 Q. Mr. Craig, are you familiar with the pre-1986 Monroe  
11 County code land development regulations?

12 A. Yes.

13 Q. Are you familiar with the moratoria that Mr. Gallaher  
14 mentioned that ran from '82 to '86?

15 A. Yes.

16 Q. Have you reviewed those moratorium ordinances and  
17 resolutions?

18 A. Yes, I have.

19 Q. Mr. Gallaher indicated that he thought there was  
20 still a moratorium in effect. Is there still a moratorium in  
21 effect on North Key Largo?

22 A. Yes. Would you like me to explain why?

23 Q. Go ahead.

24 A. The moratoria on development, with the exception of  
25 previously platted single family subdivisions in the North Key

1 Largo area which Mr. Gallaher illustrated on his map, was a  
2 part of the land development regulations adopted by the county  
3 and approved by the state September 15th, 1986.

4           A directive to the county and its planning staff was  
5 contained within those land development regulations to complete  
6 what is called a habitat conservation plan. Habitat  
7 conservation plan is a term that is drawn from federal  
8 legislation that provides a method for balancing private  
9 property concerns and the need to protect either listed  
10 endangered species or environmentally sensitive areas.

11           During my tenure as planning director and director of  
12 growth management several attempts were made to complete the  
13 habitat conservation plan. The habitat conservation plan  
14 language within the LDRs said that until such time as a habitat  
15 conservation plan, HCP, was completed there would be no  
16 development of the areas in North Key Largo. And from your map  
17 that you have seen, judge, the areas in North Key Largo, with  
18 the exception of several small subdivisions, are large tracts.  
19 And the intent of the moratoria was to prevent major  
20 developments utilizing those tracts from being processed until  
21 such time as the appropriate locations for development could be  
22 determined by the HCP.

23           After several attempts during my tenure to have the  
24 planning commission and Board of County Commissioners approve  
25 the habitat conservation plans we had prepared, failed. The

1 planning effort initiated in 1990 by myself and culminating in  
2 1992, '93 to complete a new comprehensive plan basically just  
3 shoved aside the HCP. Neither the county nor the state, which  
4 had the ability to change Monroe County's zoning or land use  
5 plan did not choose to do away with moratoria, it just sat  
6 there. From a technical standpoint the moratoria remains in  
7 effect today and the land development regulations that were in  
8 place at that time have been replaced by the new comprehensive  
9 plan which became effective in 1996.

10 THE COURT: I want to apologize for interrupting.  
11 Because no HCP was ever implemented the effect being a  
12 moratorium?

13 THE WITNESS: Yes, sir.

14 THE COURT: The reason the HCP wasn't implemented  
15 was because of local government, state government,  
16 combination of the two?

17 THE WITNESS: I would say in my opinion it would  
18 be a combination of the two.

19 THE COURT: Thank you.

20 BY MR. MATTSON:

21 Q. How do you arrive at that opinion?

22 A. How I arrive at that opinion is that the state was  
23 requiring the county to complete the HCP as it was requiring  
24 the county to complete its own comprehensive plan, land  
25 development regulations from 1982 onward by requiring the

1 county to pass a series of moratoria. I believe there were 15  
2 in number. They lasted 4.6 years. They started out as  
3 resolutions in February of 1982, were changed into ordinances  
4 at a later date to actually make them effective as a legal  
5 instrument.

6 The state funded the acquisition of planners, the  
7 direction of specific studies to implement the '86 plan and one  
8 of them was the HCP. The guidelines for the HCP were those  
9 that were approved by the state, according to their power to  
10 review each and every land development regulation and  
11 comprehensive plan under the critical state concern statute.  
12 So no matter -- in my opinion, no matter what the county  
13 created as a comprehensive plan or land development regulation,  
14 it was subject to review, approval and/or rejection by the  
15 State of Florida.

16 THE COURT: Was there local approval of an HCP  
17 plan and then went up to Tallahassee and then was  
18 rejected by Tallahassee, is that what you are stating?

19 THE WITNESS: No, it never got past the planning  
20 commission and to the Board of County Commissioners for  
21 their approval.

22 THE COURT: Then how is the state involved in its  
23 failure of never being implemented?

24 THE WITNESS: The failure was in this respect. At  
25 several times during my tenure as planning director we

1           were contacted by the State of Florida and some of its  
2           various agencies and personnel to not produce, allow  
3           rezonings, map amendments or even some vested  
4           developments within single family neighborhoods because  
5           the state was interested in purchasing property. And  
6           the longer the state could delay the implementation of  
7           the habitat conservation plan the sooner they could  
8           acquire property.

9           Let me give you an instance. The state,  
10          representatives from DCA, played a daily role in the  
11          review of the ongoing planning efforts of the county.  
12          They had a field office at that time that was staffed  
13          with probably five, six, seven, eight people and they  
14          participated with our county staff in the preparation of  
15          the HCP as well as the day-to-day review of projects  
16          that we completed.

17          In addition to that, as a county administrator --  
18          assistant county administrator and planning director, I  
19          was required to travel to Tallahassee with the county  
20          administrator on a regular basis to report to the state  
21          as to our progress in implementing the plan, changing it  
22          at their direction, according to the grants we received  
23          from them and to receive a report card as to whether we  
24          were doing a good job or not. From that we believed  
25          that we were taking direction from the state as to

1           whether we were doing a good job at their direction. I  
2           hope that's clear.

3                   THE COURT: Yes, thank you. I apologize for the  
4           interruption.

5                   MR. MATTSON: That's okay.

6 BY MR. MATTSON:

7           Q.     Mr. Craig --

8           A.     Yes, sir.

9           Q.     -- in reviewing the history of the moratoria pre-86,  
10          did you review the meeting of the governor and cabinet February  
11          1, 1983?

12          A.     Yes, I did.

13          Q.     Did that meeting involve an effort, any kind of an  
14          effort by the state to affect Monroe County?

15          A.     Yes, it did. At that meeting, and there were  
16          numerous meetings, but if I'm recalling that one correctly,  
17          that was the meeting of the Administration Commission at which  
18          the DCA basically requested the governor and cabinet to allow  
19          the state to prepare Monroe County's land use plan and to,  
20          actually to sue Monroe County so it could use the contempt  
21          power to force the county to comply with the plan. And that  
22          failed, as I recall.

23          Q.     Do you recollect or do you know from your analysis of  
24          the -- of that period, what happened after that request was  
25          made to the governor and cabinet?

1           A.     Yes.  There were -- I won't say -- directions given  
2     by the secretary of DCA that unless Monroe County passed a  
3     moratoria of the development or continued to pass moratoria on  
4     the issuance of development permits within certain areas of the  
5     county major developments, that DCA would appeal each and every  
6     development order issued by Monroe County.  And there were  
7     indications that funds would not be forthcoming for planning  
8     and other governmental efforts in Monroe County.  The result, I  
9     take it, from reading those series of moratoria and all the  
10    accompanying material, was a continuing series of moratoria on  
11    those major developments until the plan was completed.  And as  
12    a result of that direction, the county spent two years, almost  
13    three years, 93 public hearings developing the 1986  
14    comprehensive plan, land development regulations in response to  
15    the directions provided by the state.

16           Q.     Let me ask you if you recognize this document?

17           A.     Let me get my glasses on.  Yes, I do.

18           Q.     What is this document?

19           A.     This document is a verification of minutes of a  
20    meeting of the Administration Commission.

21           Q.     Is this the meeting of the Administration Commission  
22    that you just testified about?

23           A.     Yes February 1, 1983.

24           MR. MATTSON:  Your Honor, I would like to move  
25    this document into evidence.

1 THE COURT: Any objection?

2 MR. LEHRMAN: Yes, Your Honor. Not to the

3 authenticity since we do have a stipulation regarding

4 that. But the document contains, I would guess 30 or so

5 pages none of which have been testified to by the

6 witness. We don't know what his points are he is going

7 to make and we don't know whether or not these are even

8 going to be relevant. They could be highly prejudicial

9 and not relevant whatsoever.

10 THE COURT: You are not objecting to the relevant

11 portions but you are objecting to the irrelevant

12 portions?

13 MR. LEHRMAN: Yes, sir, not the entire document.

14 If there is something relevant that the witness needs to

15 put in then we would not object.

16 THE COURT: Mr. Mattson.

17 BY MR. MATTSON:

18 Q. Is there something relevant in that document?

19 A. Yes. There are several portions that are marked that

20 are parts of a report provided to the Administration Commission

21 by the Department of Community Affairs regarding the ability

22 and the intent, if you will, of Monroe County to enforce the

23 area of critical state concern guidelines that are the

24 principles for guiding development.

25 MR. LEHRMAN: Also, Your Honor, for purposes of

1 appeal, if any, we don't have any reference for which  
2 this exhibit --

3 THE COURT: Let's identify it. The witness said  
4 it was marked. How are the relevant portions marked?

5 MR. MATTSON: With red flags. Those are the  
6 portions you are attempting to introduce, the relevant  
7 parts?

8 THE WITNESS: Yes.

9 MR. MATTSON: I think the entire report from the  
10 Department of Community Affairs is relevant. The report  
11 explains why the department wants to take over the  
12 process.

13 THE COURT: Does the entire report involve only  
14 Monroe County? In other words I don't have the document  
15 in front of me so I don't know if this is a 30 page  
16 document of minutes of a meeting or report.

17 MR. MATTSON: This is just the Monroe County item.  
18 That's all I requested from the archives.

19 THE COURT: Is that correct?

20 THE WITNESS: Yes, sir.

21 THE COURT: Only as to Monroe County items?

22 THE WITNESS: Yes, sir. The areas marked are  
23 contained within a report headed Florida Keys Area of  
24 Critical State Concern dated February 1, 1983. Those  
25 are the parts that are red flagged. And with the

1 accompanying documentation as appendices.

2 MR. LEHRMAN: Your Honor, may I ask who red  
3 flagged them, whether this is this witness's testimony  
4 or the attorney's testimony, who flagged the red flags?

5 THE COURT: Who marked them?

6 THE WITNESS: Jim and I marked them together.

7 THE COURT: Thank you. You may continue. They  
8 are admitted in evidence as exhibit number 4.

9 (Defendant's marked for Identification #4)

10 BY MR. MATTSON:

11 Q. Mr. Craig, I'm going to show you a document that is  
12 in the record in this case called Second Request for Compulsory  
13 Judicial Notice.

14 A. Yes, sir.

15 Q. Ask you if you recognize the contents of that  
16 document?

17 A. Yes, I do.

18 Q. What is that document? What does that document  
19 contain?

20 A. It contains a number of, marked by tabs, a number of  
21 resolutions and/or minutes of the Monroe County Board of County  
22 Commissioners that indicate the actual resolution and/or  
23 ordinance that adopted the various moratoria which we have been  
24 speaking today.

25 MR. MATTSON: Your Honor, that is, that document

1 is in the court's record. I have a set of certified  
2 copies of what is in that document which I would propose  
3 to tender as exhibit 5.

4 MR. LEHRMAN: Your Honor, we had reserved our  
5 objection to any of these requests for judicial notice  
6 at the last hearing. I would respectfully disagree that  
7 they are in the record --

8 MR. MATTSON: I didn't mean they are in the  
9 record. They are in the court file.

10 MR. LEHRMAN: Okay. In that case I don't have an  
11 objection.

12 MR. MATTSON: Sorry.

13 THE COURT: There is no objection. Be admitted as  
14 exhibit number 5 for the defendants.

15 MR. LEHRMAN: That was the point, judge, I do have  
16 AN objection.

17 THE COURT: What is your objection?

18 MR. LEHRMAN: It's the same objection. There are  
19 many documents listed within this which are not  
20 relevant. They have not been testified to. They may be  
21 prejudicial and not relevant. They may have nothing to  
22 do with the case. Same as the other one, if there are  
23 excerpts that are relevant obviously I can have no  
24 objection to it. We don't object to authenticity but we  
25 do object to --

1 THE COURT: The entire.

2 MR. LEHRMAN: -- the entire document going in.

3 THE COURT: Mr. Mattson.

4 BY MR. MATTSON:

5 Q. Mr. Craig, are you familiar with this list?

6 A. Yes.

7 Q. All right. This is just to get this over with.

8 MR. LEHRMAN: Your Honor, is that list going into  
9 evidence?

10 MR. MATTSON: No.

11 MR. LEHRMAN: If this is something prepared by the  
12 attorney it's the attorney's testimony. The witness has  
13 not stated he has no knowledge or recollection.

14 THE COURT: The witness hasn't stated anything  
15 yet. If you let the attorney attempt to make some sort  
16 of, lay a foundation -- I'm not sure how you are going  
17 to use that document.

18 MR. MATTSON: I'm not. I'm going to use it to  
19 help him refresh his recollection as to what is in that  
20 book.

21 MR. LEHRMAN: The witness has not stated he has no  
22 recollection. As a matter of fact he said he recognized  
23 what was in the book.

24 THE COURT: That's correct.

25 BY MR. MATTSON:

1 Q. Mr. Craig, is there anything in that book other than  
2 the resolutions, the minutes affirming the resolution and the  
3 ordinances that created the rolling moratorium?

4 A. No.

5 Q. So they are all form documents?

6 A. Yes, or minutes related to those moratorium  
7 documents.

8 THE COURT: Objection is overruled. Admitted into  
9 evidence as number 5 for the defendants.

10 (Defendant's marked for Identification #5)

11 MR. LEHRMAN: Your Honor, the sheet prepared by  
12 counsel which has been given to the witness to testify  
13 from is withdrawn.

14 THE COURT: No one moved it in and that is not in.

15 MR. TOBIN: Your Honor, may I be heard for a  
16 minute please?

17 THE COURT: Yes.

18 MR. TOBIN: We have prepared, as a demonstrative  
19 aid, a table because there are numerous ordinances and  
20 resolutions and dates which are very, very difficult to  
21 keep track of and I would ask for -- we have given a  
22 copy to counsel so that there is no surprises. This is  
23 a paper intense case. I think it would be helpful to  
24 the court to at least have a demonstrative aid so you  
25 can keep track of the dates. I think Mr. Craig can

1           testify that those dates on those tables correspond to  
2           the ordinances that we have just introduced. So we are  
3           not trying to, you know -- we are trying to be helpful  
4           and organize all the documents. That's the point of the  
5           table, judge.

6           THE COURT: Response from the state.

7           MR. LEHRMAN: Your Honor, if this had been handed  
8           to me more than 20 seconds ago there would be a  
9           stipulation before the court that the witness can use  
10          them to save time. However, this was just handed to me.  
11          I have no idea if these really do correspond. I'm not  
12          saying there is anything misleading but there may have  
13          been a mistake. So I would object to the witness  
14          testifying to this or to the court considering this as  
15          evidence when in fact there has been no testimony.

16          THE COURT: I'm not considering it as evidence.  
17          It is for the purpose of aiding the court as a summation  
18          of one of the exhibits, correct?

19          MR. MATTSON: Yes.

20          THE COURT: That being exhibit number 5 for the  
21          defense, correct?

22          MR. MATTSON: Yes. I might have made an error. I  
23          had her mark the copy. I have the certified copies  
24          here.

25          MR. LEHRMAN: We already have a stipulation on the

1 copies, are fine. We don't need the certified copies.

2 MR. MATTSON: All right. We'll stick with the  
3 copy.

4 MR. TOBIN: The second request for judicial notice  
5 was filed over a month ago. You should have it.

6 MR. LEHRMAN: An objection was made at the time.

7 THE COURT: I will use this as an aid. It is not  
8 in evidence. I will rely on the testimony and the  
9 actual exhibits in evidence in any ruling. This is just  
10 an aid for the -- so the court can understand the  
11 testimony not in evidence.

12 MR. LEHRMAN: Your Honor, I would ask that this be  
13 marked for identification and travel with the case then,  
14 a copy of it.

15 THE COURT: Mark this for identification, as A for  
16 identification.

17 MR. LEHRMAN: Thank you, sir.

18 THE COURT: Not in evidence.

19 BY MR. MATTSON:

20 Q. Mr. Craig, I want to ask you if you are familiar with  
21 this document which the top says exhibit A?

22 A. Yes.

23 Q. How did you become familiar with this document?

24 A. This was -- I began to become familiar with parts of  
25 this document more than ten years ago when acting as an expert

1 witness in a couple of cases dealing with individual takings  
2 cases or eminent domain cases in North Key Largo because this  
3 is part of the file of letters, newspaper articles that really  
4 went to the creation of the state's interest in the protection  
5 of North Key Largo from development that the state did not feel  
6 appropriate for North Key Largo. And it contains a series of  
7 executive orders, newspaper articles, correspondence and  
8 letters to and from the county and the state that describe the  
9 situation as it was beginning to occur in '82 as to development  
10 in North Key Largo and the need to protect it.

11 Q. Did you prepare an affidavit in this case sometime  
12 ago?

13 A. Yes, I did.

14 Q. Do you remember when that was?

15 A. I have it with me here Jim. I will go to the date,  
16 specific date. I believe it's November 15th. It doesn't have  
17 an actual date that I signed it but the date on the bottom of  
18 the page is November 15th, 2003.

19 Q. In that affidavit did you reach a conclusion that was  
20 in any way based upon exhibit A, the materials in exhibit A?

21 A. Yes.

22 MR. LEHRMAN: Your Honor, I object to this  
23 procedure of using a summation of this witness's  
24 testimony contained within an affidavit which is not  
25 before the court. The witness is before the court. The

1 affidavit, I don't recall what it contained, but I do  
2 know that this exhibit -- I guess it would have to be  
3 exhibit B because exhibit A is the summary. But  
4 whatever this is in front of the witness --

5 THE COURT: Your objection is it is an out of  
6 court statement? What exactly is your objection?

7 MR. LEHRMAN: That would be the first. In  
8 addition to that it appears to be based upon newspaper  
9 articles and unnamed letters and things that are  
10 contained within this bound document before the witness.  
11 A newspaper article is not admissible evidence. It  
12 simply isn't. It's hearsay.

13 THE COURT: Sustained. Mr. Mattson if we can move  
14 on with the testimony. The affidavit is an out of court  
15 statement.

16 BY MR. MATTSON:

17 Q. Mr. Craig -- the affidavit is an out of court  
18 statement. I thought the debate was over exhibit A?

19 MR. TOBIN: No, the affidavit.

20 THE COURT: The affidavit.

21 MR. LEHRMAN: There may be a debate later of that  
22 exhibit whatever. Let's get it straight, Your Honor, if  
23 we might just so I know. Is it my understanding this is  
24 exhibit A?

25 THE COURT: That's correct, marked for

1 identification. It's not in evidence.

2 MR. LEHRMAN: No, I understand that. If this  
3 document that the witness is now leaping through which  
4 is many pages, can that be identified for the record as  
5 exhibit B?

6 MR. MATTSON: It says exhibit A on the front page  
7 we are referring to it by it's -- not the evidentiary  
8 name.

9 MR. LEHRMAN: That's where the confusion is coming  
10 in. If it can be marked for identification.

11 THE COURT: What is it that the witness is looking  
12 at?

13 MR. MATTSON: Exhibit A to our motion for summary  
14 judgment filed in 2003.

15 THE COURT: Thank you. Is there a pending  
16 question?

17 MR. MATTSON: No.

18 THE COURT: Did you want to mark it for  
19 identification with a number? Are you planning on  
20 introducing it?

21 MR. MATTSON: Sure.

22 THE COURT: Then we better.

23 MR. MATTSON: We'll do that.

24 MR. TOBIN: Judge, to avoid the court file getting  
25 any bigger there is that exhibit A attached to the

1 motion for summary judgment already in the court file.  
2 Would it be appropriate to locate that document in the  
3 court file, have that marked and it's already in the  
4 court file.

5 THE COURT: Since we are on volume four or five it  
6 may be easier if you have a copy.

7 MR. TOBIN: It's a very thick exhibit. That's why  
8 I was suggesting -- I could look for it judge.

9 MR. MATTSON: That's okay.

10 BY MR. MATTSON:

11 Q. Mr. Craig, was part of your assignment to determine  
12 whether the State of Florida was involved with the pre-86  
13 moratoria?

14 A. Yes.

15 Q. What did you examine in order to determine the extent  
16 of the state's involvement?

17 A. We examined a number of letters, correspondence  
18 between the county and the state, the minutes of the meeting of  
19 the Administration Commission of which we spoke earlier,  
20 pre-86. That's it.

21 Q. Did you review the depositions of Ed Swift and Ken  
22 Sorensen?

23 A. Yes, I did.

24 Q. Did you reach a conclusion?

25 A. Yes.

1 Q. What was your conclusion?

2 MR. LEHRMAN: Objection, Your Honor. The witness  
3 is not qualified to render a legal opinion as to whether  
4 or not the state -- whatever the question is the state's  
5 involvement -- by the way the question as constituted is  
6 improper anyway. What part of the state are we talking  
7 about, Monroe County as a subdivision? Are we talking  
8 about the Department of Community Affairs? Are we  
9 talking about the parties that are here before the court  
10 which is the Department of Environmental Protection?  
11 That's the first objection, the form of the question.  
12 The second is that it is beyond this witness's stated  
13 expertise to make a legal determination whether or not  
14 the state is involved to the point of having liability.

15 THE COURT: This is an involvement prior to the  
16 witness's employment with Monroe County, correct?

17 MR. MATTSON: Correct.

18 THE COURT: Mr. Mattson.

19 MR. MATTSON: First of all the real party in  
20 interest in this case is the State of Florida. It's not  
21 relevant that the DEP is paying the bill or that the DEP  
22 is on the style of the case. The DEP, the DNR all of  
23 the alphabet agencies of the state, executive agencies,  
24 are appointed by the governor or the governor and the  
25 cabinet. The governor and the cabinet sit as the

1 Administration Commission in which capacity they have  
2 adopted regulations for Monroe County, on several  
3 occasions. The governor and cabinet also sits as the  
4 trustees of the Internal Improvement Fund who hired this  
5 attorney to represent the state in this case as the  
6 agent of DEP. DEP can't sue DNR because they are both  
7 part of the same family.

8 THE COURT: I'm not really concerned with that  
9 portion of the objection. The part I would like you to  
10 address this witness's ability and his expertise to  
11 testify about something that occurred prior to his  
12 employment.

13 MR. MATTSON: This witness was called both as a  
14 fact witness and as an expert witness. As an expert  
15 witness he can testify to things that he has learned,  
16 even if they come through hearsay and inadmissible  
17 documents. He is a professional planner. And certainly  
18 in his exercise of his planning activities from 1987 to  
19 1990 as well as his activities post 1990 in Monroe  
20 County, he certainly was in a position to learn what the  
21 Monroe County regulations are, how they are promulgated,  
22 who is involved. Furthermore he reviewed these pre-86  
23 documents that are in exhibit A to the motion for  
24 summary judgment. I have asked him whether, by  
25 reviewing those documents as well as everything else

1 he's learned since then, does he have an opinion as to  
2 what the state's involvement was.

3 When I say involvement I'm not asking for a legal  
4 opinion. I am asking him what were the roles of Monroe  
5 County and the state in doing this. He also read the  
6 depositions which we have and expect to introduce into  
7 evidence, or at least part of them in evidence, of Ed  
8 Swift and Ken Sorensen. Ken Sorensen was county  
9 commissioner from 1980 to '84. Ed Swift was county  
10 commissioner from 1982 to '86. So he has the benefit of  
11 their sworn testimony. I think as an expert he's  
12 allowed to rely on all that material.

13 THE COURT: He's an expert in planning. How does,  
14 the depositions for example, how would you lay a  
15 foundation that an expert in planning customarily uses  
16 depositions of county officials to determine planning  
17 issues, give opinion on planning issues?

18 MR. MATTSON: I think it's a two part question.  
19 First of all experts are not limited to reading books  
20 and documents but certainly they can read depositions.  
21 The question really is as a planner -- don't do that.

22 MR. TOBIN: Get my own podium.

23 THE COURT: As a planner.

24 MR. MATTSON: As a planner he certainly has to  
25 understand how land development regulations are formed.

1           These moratoria are common redevelopment tools.

2                   THE COURT:  Whatever a planner uses or expert uses  
3           to arrive at the expert opinion there is an exception to  
4           the hearsay, they can certainly use that.  But I haven't  
5           heard anything that lays a foundation they are allowed  
6           to use a deposition that an expert in planning would  
7           normally use a deposition to arrive at an expert opinion  
8           in planning.

9                   MR. TOBIN:  May I have a moment with counsel?

10                   MR. MATTSON:  I'll lay a better foundation and  
11           he'll sit down.

12  BY MR. MATTSON:

13           Q.     Mr. Craig, you testified earlier that you were also  
14           an assistant county administrator; is that correct?

15           A.     That's correct.

16           Q.     As assistant county administrator do you have any  
17           responsibility for county commission activities, planning  
18           commission activities, ordinances, resolutions and regulations?

19           A.     Certainly.

20           Q.     What sort of experience did you have in that area?

21           A.     It was quite broad.  Ultimately I was responsible for  
22           the issuance of every building permit in the county because I  
23           was in charge of the building department.  I was responsible  
24           for every ordinance relating to land use or environmental  
25           regulations that was caused to be created and approved by the

1 planning commission and/or the Board of County Commissioners  
2 and I was responsible for the management of the growth  
3 management function at the direction of the county  
4 administrator and ultimately the Board of County Commissioners.

5 Q. Were you number two to the county administrator?

6 A. Yes.

7 Q. Did you attend county commission meetings?

8 A. Yes.

9 Q. Did you draft ordinances and resolutions?

10 A. Yes.

11 Q. Did you negotiate --

12 MR. LEHRMAN: Objection, Your Honor. All leading  
13 questions. They are not preliminary at all.

14 THE COURT: Overruled.

15 BY MR. MATTSON:

16 Q. Did you negotiate agreements with the Department of  
17 Community Affairs?

18 A. Yes.

19 Q. Did you testify in judicial and administrative  
20 proceedings?

21 A. Yes.

22 Q. Do you know Mr. Swift?

23 A. Yes.

24 Q. Do you know Mr. Sorensen?

25 A. Yes.

1 MR. MATTSON: One moment.

2 BY MR. MATTSON:

3 Q. Are you familiar with how the Department of Community  
4 Affairs and the Administration Commission function in their  
5 oversight role in areas of critical state concern?

6 A. Yes.

7 Q. Have you attended Administration Commission meetings?

8 A. Yes.

9 Q. Have you negotiated with the Administration  
10 Commission staff?

11 A. Yes.

12 Q. Are these functions something that a normal expert  
13 planner would have in his background or do they go beyond what  
14 a planner would normally have?

15 A. When one uses the word normal it's rather --

16 Q. Let me rephrase it. You had employees who were  
17 planners when you worked for the county?

18 A. Clearly, yes.

19 Q. Did they get involved with these, what I will call,  
20 political machinations to the extent that you did?

21 A. No, they did not. And if they did I usually  
22 chastised them for that.

23 Q. Was a large part of your job -- what part of your  
24 job -- excuse me, I don't want to lead. What part of your job  
25 or what percentage of your job involved dealing with state

1 agencies and with the Monroe County Commission rather than just  
2 the material that came up to you as planning director?

3 A. During that period of time a great deal. And it was,  
4 judge, it was a very different type of planning director's job  
5 from those which I had before because of the amount of state  
6 involvement. When I walked in the door September 15th, 1987  
7 after having been interviewed by the Board of County  
8 Commissioners and hired directly by them I was presented with a  
9 list of grants, contracts and requirements between the county  
10 and the state that said you will proceed in this particular  
11 manner to complete this particular study in order to implement  
12 the comprehensive plan and change the land development  
13 regulations. In very few cases in my experience as a planner  
14 both in California, Colorado, Arizona, Montana, Florida and  
15 Minnesota, all of which are the states I worked in, seldom do  
16 you find a partnership or an intertwining of the state and the  
17 local jurisdiction to the degree that you found in Monroe  
18 County.

19 MR. LEHRMAN: Your Honor, I would move to strike  
20 this as not being relevant. The issue is everything  
21 before this man, qualified as he may be, came on the  
22 job. He's talking about everything since then when he  
23 came in in '87. We are talking about '86 and before,  
24 judge.

25 THE COURT: Let's get back on track please, Mr.

1 Mattson.

2 BY MR. MATTSON:

3 Q. In your review of the history of the 1986 plan, did  
4 you have the opportunity to look at the proceedings that led up  
5 to that plan?

6 MR. LEHRMAN: Your Honor, this again is trying to  
7 back door an expertise type of argument into something  
8 which this witness has already testified --

9 THE COURT: You can make that objection when we  
10 get to the point. He's about to give an opinion but at  
11 this point we are not there yet.

12 THE WITNESS: Can you restate the question, I'm  
13 sorry.

14 BY MR. MATTSON:

15 Q. Did you review the events and the drafts and the  
16 documents that were prepared in the production of the 1986  
17 plan?

18 A. Yes, I did.

19 Q. What was your purpose in doing that?

20 A. Several fold. Having been presented this huge task  
21 of implementing and changing the land development regulations  
22 when I walked in the door at the direction of the Board of  
23 County Commissioners and in response to the contracts that had  
24 been signed by the state, I needed to understand the history of  
25 the plan. And it really started prior to my actually taking

1 the job because prior to the interview I read the entire plan  
2 and I interviewed Charles Pattison, who was my predecessor as  
3 planning director, even before I got the job. And the reason  
4 for that obviously is wanting the job and being prepared for  
5 the interview. But once I came on board I needed to understand  
6 the context of where we were at that time.

7 And being a reasonably thorough person I wanted to  
8 understand the history. How do we get from where we were with  
9 the area of critical state concern when it was first adopted in  
10 1974 and then subsequently changed and amended over the years  
11 so that I could understand my task. And that required me not  
12 only to review the documents but to interview my staff, who had  
13 been here longer than I obviously and to understand what I had  
14 to deal with because like most things in planning and in  
15 complicated projects with multiple tasks and disciplines  
16 involved and we had planners and builders and environmentalists  
17 and all of that, you have to understand that larger context.

18 Once you understand that larger context you can  
19 create a strategy and an implementation plan to move forward.  
20 That's why I reviewed the record that occurred before me. I  
21 just thought, and to this day think, that it's the  
22 professional, reasonable thing to do if you are going to  
23 proceed forward, you have to understand the history.

24 Q. Some of those materials in the document marked  
25 exhibit A which was an exhibit to our motion for summary

1 judgment predate your appearance in Monroe County, do they not?

2 A. Certainly.

3 Q. Did you review those documents to learn what preceded  
4 you?

5 A. I didn't --

6 MR. LEHRMAN: Your Honor, I object to the  
7 vagueness of the question. We don't know what  
8 documents.

9 THE COURT: Sustained.

10 BY MR. MATTSON:

11 Q. Can you identify the documents that preceded your  
12 tenure here?

13 A. Yes. These are some of those which is exhibit A.

14 Q. But not all of them, correct?

15 A. Not all of them.

16 Q. How many of does -- aren't they dated on the  
17 left-hand side?

18 A. Yes, they are.

19 Q. How many documents are in there that predates your  
20 tenure as planning director and assistant county administrator?

21 A. Twenty.

22 Q. Did you review those documents in the past?

23 A. Yes, I did.

24 Q. Since you have left the employ of Monroe County in  
25 1990, have you had occasion to review the materials that were

1 produced prior to your arrival here?

2 A. Oh, yes. It is part of my job on a regular occasion.

3 Q. Have you had occasion to look at old codes?

4 A. Clearly.

5 Q. Why do you look at old codes?

6 A. Well, to give you a simple example, when a person  
7 wishes to rebuild a house and the county or Marathon questions  
8 whether all of the structures on his lot were legal and lawful  
9 one often goes back to the original code to understand what  
10 could have been built when it was built before 1984. It goes  
11 back to the old record from every location, the property  
12 appraiser's office, tax records, aerial photographs, previous  
13 building permits. We on a regular occasion do a previous  
14 permit review for many, many projects in order to establish a  
15 history entitlement and to understand what one could have built  
16 and whether if it were built lawfully before a certain date  
17 whether it was vested from the new legislations. It's a normal  
18 course of action.

19 When preparing for a vested rights hearing or  
20 determination of entitlements that requires testimony before a  
21 board or a commission we research as far back as we can and  
22 understand the regulations, the resolutions, all of that in  
23 order to provide a thorough understanding of the background of  
24 the request.

25 MR. MATTSON: One moment.

1 THE WITNESS: I apologize if I'm being long-winded  
2 but sometimes these things are --

3 THE COURT: The subject matter.

4 THE WITNESS: Yes, sir.

5 BY MR. MATTSON:

6 Q. Do you know when the area of critical state concern  
7 designation was effective?

8 A. Well, the first was in 1974, '75 and then that was  
9 found not to be lawful in its method of adoption. And then I  
10 believe the critical state concern became effective in 1978  
11 after the legislature.

12 Q. Are you familiar with the area of critical state  
13 concern legislation?

14 A. Yes.

15 Q. What role does the state have under the area of  
16 critical state concern statute, which is 380.05, what role does  
17 the state have in Monroe County's land development regulations?

18 MR. LEHRMAN: Your Honor, I would object only to  
19 the term the "state" as being vague. For example if one  
20 of these Harleys that is going back and forth on the  
21 roadway gets hit by a DOT dump truck, if they were to  
22 bring suit against the state department of education it  
23 would be dismissed. What we are talking about here is a  
24 specific party and only one is before the court, that's  
25 the State of Florida.

1 THE COURT: Your objection on that ground is  
2 overruled. What time period are you talking about?

3 MR. MATTSON: Since '79.

4 BY MR. MATTSON:

5 Q. Since it's just a legal issue, the statute hasn't  
6 changed much, had some tweaks here and there but basic  
7 relationship is the same?

8 A. Briefly --

9 THE COURT: Go ahead.

10 Q. Actually brief answers wouldn't be a bad thing.  
11 Briefer answers would be good.

12 A. The state has the power to review, with certain  
13 exceptions, every development order issued by Monroe County and  
14 the jurisdictions within Monroe County. The state has the  
15 power to approve or deny every ordinance related to land use  
16 and all comprehensive plan changes enacted by Monroe County.  
17 The state has the power under state statute 380.055 or .05  
18 rather, with permission of the Administration Commission, to  
19 amend Monroe County's plan and land development regulations if  
20 it so choses or as directed by the Administration Commission, I  
21 believe, not more than once a year. That's it in brief.

22 Q. This has been true since '79, since the designation?

23 A. Yes.

24 Q. When you arrived in '87 were all of these things  
25 taking place?

1 A. Yes.

2 Q. Do you have any reason to believe they weren't taking  
3 place from '79 to '87?

4 A. I know that they were.

5 Q. Does the moratorium ordinance, a moratorium on  
6 accepting land development applications or processing land  
7 development applications, does that ordinance have to get the  
8 approval of the State of Florida to be effective?

9 A. Yes because it has the effect of approving or denying  
10 development.

11 Q. Did the moratorium ordinances, prior to your arrival,  
12 have to be approved by DCA?

13 A. Yes.

14 Q. Now what happens if DCA doesn't like an ordinance  
15 that effects the use of land, what do they do?

16 A. They have the right to appeal that ordinance or deny  
17 it.

18 Q. They have the right to deny it?

19 A. Yes.

20 Q. If they don't approve it it dies; isn't that correct?

21 A. That's correct.

22 Q. If DCA doesn't like a development order what do they  
23 do?

24 A. They appeal it. They deny it in effect.

25 Q. But they appeal it, right?

1 A. Yes.

2 Q. To the Florida Land and Water Adjudicatory  
3 Commission?

4 A. Yes. Which then goes through a series of  
5 administrative hearings.

6 Q. Do you know whether there were any projects on North  
7 Key Largo that had been appealed by the state and those appeals  
8 were still running when you took office?

9 A. I believe there were. I think there were four in  
10 number. I can't recall the specific names.

11 Q. On your watch did the state use its -- no, did the  
12 state threaten to use its power to refuse to approve or to  
13 appeal in order to get Monroe County to adopt something that it  
14 wanted?

15 A. Clearly, yes.

16 Q. Did discussions take place between Monroe County  
17 officials and state officials on a regular basis to determine  
18 whether something the county wanted to do would be approved?

19 MR. LEHRMAN: Objection to the form of that  
20 question, regular basis not being defined, state  
21 officials, Monroe County officials. Nothing is defined  
22 in that question.

23 Q. If you know?

24 THE COURT: Overruled.

25 THE WITNESS: Yes. I met with state officials,

1 members of the department of -- Florida Department of  
2 Community Affairs on a regular basis. Spent a great  
3 deal of time in Tallahassee with those officials  
4 negotiating changes to land development regulations,  
5 comprehensive plans, ordinances, development review, to  
6 get to a point where that which was submitted by Monroe  
7 County would be approved by the state. On several  
8 occasions the state appealed or denied ordinances that  
9 the county had passed, denied or suggested changes to  
10 ordinances and land development regulations. I believe  
11 the number that we processed in a two year period was  
12 something like 58 changes to the land development  
13 regulations, many of which went through a very  
14 convoluted process of negotiation for zoning changes as  
15 well as changes to the land development regulations.

16 And if you followed the actual printed code of  
17 Monroe County code you will actually see enumeration of  
18 changes by ordinance that are referred to with a number  
19 that indicates that they were negotiated agreements  
20 between the state and the county.

21 BY MR. MATTSON:

22 Q. To the best of your knowledge did the Administration  
23 Commission make wholesale changes to the 1986 plan in 1986?

24 A. Yes. It was submitted in February of that year. It  
25 became effective September 15th of 1986 and during that period

1 of early 1986, late 1985 to the effective date of '86 the state  
2 caused numerous changes to the plan.

3 Q. Did the Administration Commission use it's once a  
4 year power after that to amend Monroe County's regulations?

5 A. Yes. Not as often but several times.

6 Q. Did it become necessary for you to, you and  
7 commissioners, to travel to Tallahassee or to have Tallahassee  
8 and DCA personnel travel here to negotiate regulations?

9 A. Yes, numerous times.

10 Q. Do you have any reason to believe that this all  
11 started the day before, the day after you got there, or do you  
12 believe it had been going on for some time?

13 A. I like to believe it's a more orderly process after I  
14 got there but it occurred before that.

15 Q. Did you speak to your predecessors in your job?

16 A. Yes.

17 Q. Did you find out from them as to what extent they  
18 have to tow the line, if I can use that phrase, with the  
19 Department of Community Affairs and the governor and the  
20 cabinet in order to get the job done?

21 MR. LEHRMAN: Objection to the term "tow the  
22 line." Objection to hearsay testimony.

23 THE COURT: Sustained.

24 MR. MATTSON: Can we have a five minute break?

25 THE COURT: I was going to suggest that. Let's



1 dates back to about 1980 or so, '81, '82.

2 MR. LEHRMAN: Excuse me. What would the front  
3 starting date be?

4 MR. MATTSON: '75.

5 MR. LEHRMAN: '75 to '82.

6 THE WITNESS: Maybe I'll clarify.

7 THE COURT: '82 to '86.

8 THE WITNESS: I was most familiar, prior to my  
9 arrival and doing my research, 1980 to '82 and then '83  
10 and '84 because those are the critical dates for this  
11 assignment and for previous assignments dealing with  
12 eminent domain and also for day-to-day work for  
13 researching previous approvals and such.

14 BY MR. MATTSON:

15 Q. Did you have the occasion to consult for counsel on  
16 another eminent domain case on condemnation blight in the Keys?

17 A. Yes.

18 Q. Did you do that research?

19 A. Yes.

20 Q. How far back did you go?

21 A. I think we went back to 1979, '80.

22 Q. Based on your research, what during that period was  
23 the relationship between the Department of Community Affairs  
24 and Monroe County?

25 MR. LEHRMAN: Objection, Your Honor. The specific

1 research and documents have not been identified. There  
2 is an improper predicate for this particular opinion.

3 THE COURT: You are asking what did he rely on to  
4 come up with an opinion?

5 MR. LEHRMAN: Yes, sir.

6 THE COURT: Mr. Mattson.

7 Q. Other than the documents that are there in exhibit A  
8 to the motion for summary judgment, do you remember what other  
9 documents you reviewed?

10 A. Yes. We previously discussed the ordinances and  
11 resolutions that were passed by the Board of County  
12 Commissioners with regard to the moratoria. We had reviewed  
13 the previous minutes of the Administration Commission for this  
14 assignment, this assignment. I also reviewed the records  
15 pertaining to the subject property in terms of building permit  
16 files, the previous plan, the 1986 plan and the research for  
17 that. And then in a general sense developing over several  
18 projects, including my tenure as a planning director, all the  
19 documentation that led up to the '86 plan inclusive of legal  
20 memoranda prepared by the attorneys for the county at that  
21 time, the data and analysis that led up to the '86 plan that  
22 was inclusive of what was going on in Key Largo, in North Key  
23 Largo, all of that.

24 BY MR. MATTSON:

25 Q. Did you rely on those same material or other

1 materials in your assignment in the previous condemnation  
2 blight case?

3 A. Those, all of those materials.

4 Q. Based on your review, I'm not asking you a question  
5 about condemnation blight, I'm simply asking you based on your  
6 review, what was the relationship between the Department of  
7 Community Affairs from '80 to '87 and if any, how did it differ  
8 from the relationship from '87 to now?

9 MR. LEHRMAN: Your Honor, this again -- what we  
10 have here is a gentleman who is well qualified as a land  
11 planner apparently. He is being asked a request which  
12 goes well beyond the scope of a land planner. He has  
13 been asked to do certain things in this case but that  
14 doesn't make him an expert in doing those things that  
15 are well beyond the scope of being a land planner.

16 THE COURT: A land planner doesn't work in a  
17 vacuum.

18 MR. LEHRMAN: Certainly not.

19 THE COURT: Doesn't a land planner who comes in to  
20 a new position at least have, if they don't want to be  
21 negligent, know the history of recent legislation and  
22 certain history of state and local government and know  
23 the laws and what is going on in local planning issues  
24 and the history of local planning issues if they were to  
25 do their job?

1           MR. LEHRMAN: Yes, Your Honor, a land planner  
2           should be generally familiar with it and specifically as  
3           it applies to the subject property. However the  
4           question posed is what is the state's involvement in  
5           moratoria, etcetera, not specific to this property and  
6           certainly knowing the case -- whether or not the  
7           moratoria would apply to property, how the property can  
8           be developed, things of this nature are all in the  
9           nature of land planning. But to have a man who has, we  
10          are calling it exhibit A, it is not marked as such I  
11          think it would be exhibit B. This contains things such  
12          as an article by Carl Haaisen in the Miami Herald from  
13          1982. This contains letters of opinions from the US  
14          Fish and Wildlife Service. This has other Miami Herald  
15          articles by Juanita Green. This has notes of the CARL  
16          commission. These are things that -- many, many more  
17          things, the Miami Herald. Something from someone named  
18          Butch Horn. No real explanation.

19                 None of these things go to the expertise of a land  
20          planner in determining what can be done with the  
21          property, Your Honor. These are all things which go to  
22          the assignment that this witness was given in order to  
23          present testimony before Your Honor. He doesn't have  
24          any special expertise. If these things are relevant  
25          they should be coming in through the relevant witness.

1 Bringing in an opinion of Carl Haaisen or Juanita Green  
2 or some of these other people that work for the Herald  
3 or the DNR or any of these other, US Fish and Wildlife  
4 Service which has no bearing on the role of a planner in  
5 the case should not be allowed to be brought in through  
6 this planner because I can't cross examine on the views  
7 of Carl Haaisen and the opinions of Carl Haaisen through  
8 a land planner and it isn't his function to do this. He  
9 was just given this assignment for this case. A land  
10 planner doesn't normally do things like this.

11 MR. MATTSON: The objection is poorly taken. Don  
12 Craig is not simply a land planner. He was the  
13 assistant county administrator for three years in Monroe  
14 County. He is a planning and development consultant.  
15 He has a much broader background than counsel seems to  
16 believe land planners have. I'm not sure --

17 THE COURT: Does that include newspaper articles?

18 MR. MATTSON: I didn't ask him about newspaper  
19 articles. I asked him about the relationship between  
20 the Department of Community Affairs and the county. I  
21 didn't ask him about Carl Haaisen's opinion.

22 THE COURT: But in arriving at his opinion did  
23 those newspaper articles play a factor?

24 MR. MATTSON: If they played a factor and the  
25 witness says they played a factor, the factor that they

1 may have played would have been --

2 THE COURT: The only thing that would make it  
3 relevant would be if they played a factor in affecting  
4 the relationship between DCA and the county. The  
5 relationship between DCA and the county is whatever it  
6 was. If it was influenced by Carl Haaisen's huge  
7 articles in the Herald then it was influenced. But this  
8 may not be the witness to show that.

9 MR. MATTSON: I haven't asked him whether Carl  
10 Haaisen had anything to do with it. I simply said how  
11 did they function.

12 THE COURT: The question was a general question as  
13 to this exhibit A that is really exhibit B for  
14 identification, is did he use all those documents in  
15 there in coming up with his opinion pre-1986. And I  
16 want to know from the witness when you say that you used  
17 those items in exhibit B for identification does that  
18 include newspaper articles?

19 MR. MATTSON: Don, that's a question to you.

20 THE WITNESS: I'm sorry?

21 THE COURT: The newspaper articles. I'm having  
22 trouble with the idea that as part of your expertise,  
23 someone coming into your position in 1986 or '87 when  
24 you came in, that you would go back and look  
25 historically at newspaper articles from the Miami Herald

1 and you would do that as part of your job as the county  
2 planner.

3 THE WITNESS: Obviously, sir, it would not be the  
4 most important thing. It would not be the only thing.  
5 But as a graduate in history one has to look at all the  
6 parts of the political and social context that make up a  
7 series of events and what I relied upon was the,  
8 totally, interviews with my staff in coming in who had  
9 been there, as I said, reviewing the files of the data  
10 and documentation that was actually used to create the  
11 1986 plan inclusive of the discussions of the North Key  
12 Largo hammocks, the memoranda between the state and the  
13 county with regard to what is expected --

14 THE COURT: I understand. All of that is given.  
15 I agree that you have to go back and do your historical  
16 research to understand what you're stepping into.

17 THE WITNESS: Yes, sir.

18 THE COURT: The question is, is an expert in your  
19 area, would they normally go back and also look at  
20 newspaper articles or is that something that you did  
21 really for this most recent assignment by Mr. Mattson?

22 THE WITNESS: No, I think a good planning director  
23 has to understand that, for a lack of a better term,  
24 what the state is saying about the situation that you  
25 step into. Sometimes newspaper articles provide a

1 viewpoint that you will never get by simply reading a  
2 memoranda. I think you have to give the weight a  
3 newspaper article deserves which is that in many cases  
4 it's an opinion rather than a pure statement of the  
5 facts.

6 But I think a good planning director would review  
7 all of the available data and opinions in order to  
8 arrive at a reasonable conclusion.

9 THE COURT: And you did that in this case when you  
10 came into the job here in Monroe County, you looked at  
11 these articles?

12 THE WITNESS: Yeah and --

13 THE COURT: Carl Haaisen's articles.

14 THE WITNESS: I will tell you the reason I read  
15 some of the articles.

16 THE COURT: We are talking again back in 1987?

17 THE WITNESS: Yes. And the reason was they were  
18 in the files. Staff, in some cases a couple of staff  
19 collected a number of different things and they were in  
20 the files. And, you know, just being the person I am I  
21 read them.

22 THE COURT: Objection is overruled.

23 MR. LEHRMAN: May I voir dire Your Honor very  
24 briefly?

25 THE COURT: Yes.

1 MR. LEHRMAN: Thank you, sir.

2 VOIR DIRE EXAMINATION

3 BY MR. LEHRMAN:

4 Q. What is known to the court as exhibit A, entitled  
5 exhibit A, contains a number of documents?

6 MR. TOBIN: Can I make a suggestion counselor?

7 MR. LEHRMAN: Yes, sir.

8 MR. TOBIN: Can we renumber that little photograph  
9 as B since that has a document on it that says A.

10 MR. LEHRMAN: As long as the record is clear I  
11 have no preference.

12 THE COURT: We'll do that.

13 MR. LEHRMAN: We'll now be referring to this large  
14 booklet as exhibit A.

15 THE COURT: Exhibit A and the one page summary as  
16 exhibit B for identification only.

17 MR. LEHRMAN: Thank you, sir.

18 BY MR. LEHRMAN:

19 Q. Mr. Craig, did you compile exhibit A?

20 A. No. Jim and I put it together and we reviewed the  
21 final production.

22 Q. Okay. Are you telling the court that you  
23 specifically remember reading an article which was written by  
24 Brian Duffy and Carl Haaisen in July 25th of 1982 and you that  
25 you read that article in 1987?

1           A.     No, I can't tell you that I read that article, that  
2 particular article in 1987.

3           Q.     You just told the court you --

4           A.     No.

5           Q.     Would you like to see your answer?

6           A.     No, I'm not telling the court that. I believe what I  
7 said, Your Honor, I read the available articles that were in  
8 the files at that time.

9           Q.     Mr. Craig --

10          A.     And I hope that is exactly what I said.

11          Q.     Mr. Craig, do you recall if any of these articles  
12 that are contained within exhibit A were in your file at the  
13 time?

14          A.     I believe there is one in there that kind of stands  
15 out.

16          Q.     And which one would that be, sir?

17          A.     It's the one that has the aerial photograph that  
18 accompanied the article that -- this one. This one was a  
19 telling article because it talked about the numerous projects  
20 that were taking place in North Key Largo. And probably had at  
21 that one time one of the best photographs of North Key Largo,  
22 aerial photograph, and pinpointed some of the largest projects  
23 in North Key Largo that were the subject or the target of the  
24 planning process for North Key Largo. That's always stuck out  
25 in my mind.

1 Q. I don't want to get into cross examination too deeply  
2 at this point but the other questions are, are there anything  
3 else on this list that you specifically remember reading in  
4 1987 when you came on the job?

5 A. Yes. This public order 84-157 because that's what  
6 created the North Key Largo committee. I had a conversation  
7 with a then employee of mine, George Garrett, who I assigned  
8 the HCP and I wanted to understand the history of that. That  
9 one I recall.

10 Q. Mr. Craig, just for the record that is item number  
11 10, is that correct?

12 A. That's item number 10.

13 Q. Anything else that you specifically remember reading  
14 in 1987 which is on this list which is compiled by counsel and  
15 yourself?

16 A. This one here.

17 Q. Item 22?

18 A. Item 22.

19 Q. Identify it for the court?

20 A. It's the -- the author is Tom Gardner, DNR executive  
21 director, Monroe County commission regarding concerns over  
22 rezoning annexation extension of water and sewer services to  
23 CARL areas because that may have had an effect of financing of  
24 water lines that came down the road to the remainder of the  
25 county. And I was quite concerned about, as was the commission

1 at that time, about what was going to happen. That was just  
2 after I arrived. This was 10-27-87.

3 Q. Yes, sir.

4 A. And then I remember this one in item number 32 from  
5 Butch Horn regarding the appraisal for the North Key Largo  
6 hammocks. I remember that specifically because Mr. Horn is the  
7 official from the state who called me asking that the county  
8 not rezone or change a map because it would have a effect on  
9 the value of the properties in North Key Largo. I think those  
10 are some of the telling ones that I recall specifically.

11 MR. LEHRMAN: Your Honor, as far as the  
12 objections, they are specifically to all items contained  
13 within exhibit A before the court with the exception of  
14 item 10, item 22 and item 32.

15 THE COURT: By all, you mean all newspaper  
16 clippings?

17 MR. LEHRMAN: Yes, sir. All of the newspaper  
18 clippings and other articles that the witness says that  
19 he did not consider when he was on the job, that it was  
20 just done for purposes of this case.

21 THE COURT: So your objection is as to his opinion  
22 or as to those items coming into evidence or both?

23 MR. LEHRMAN: It is to both, Your Honor. I  
24 believe that his opinion is not well-founded. In other  
25 words it does not have a predicate and the booklet

1 created by counsel for the case contains items and  
2 articles which were not considered by this witness in  
3 the area of his expertise.

4 THE COURT: Mr. Mattson.

5 MR. MATTSON: Number one it is probably pretty  
6 difficult for anybody in this room to give us a list of  
7 what they read in 1987 today. The witness has indicated  
8 that he conducted research into the files in order to  
9 understand how the system works basically, who the  
10 players are and who he has to deal with and who is above  
11 him and who is below him, who can stop him and who can  
12 help him. The fact that some of those documents he may  
13 not remember having read in 1987 doesn't prohibit him  
14 from reaching an opinion as to their significance today.  
15 Only 20 of them predate his arrival. The others are all  
16 since he arrived here.

17 He is an expert witness. He's allowed to rely on  
18 hearsay. He doesn't have to have seen the hearsay 20  
19 years ago or 10 years ago. He could have seen the  
20 hearsay five years or three years or in this case two  
21 years ago. He's certainly entitled to express an  
22 opinion that is based on both his personal knowledge  
23 from 1987 to now and what he's been able to glean from  
24 exhibit A and what he was able to glean on the job and  
25 during his --

1           THE COURT: I think he can do that. The problem  
2           is the items that he did not identify as forming his  
3           opinion, the items he could not identify as forming his  
4           opinion back in 1987. Those items -- by items I mean  
5           newspaper articles that he cannot identify something  
6           that he looked at that a normal planner would look at  
7           then those items are excluded from exhibit B for  
8           identification. But he is allowed to give an opinion as  
9           to the relationship between the state and the county as  
10          he understood it when he first took the job in 1987. So  
11          he can give an opinion as to the state and county's  
12          relationship pre-1987.

13                 MR. MATTSON: Thank you, Your Honor.

14                 THE COURT: To 1980.

15                 BY MR. MATTSON:

16                 Q.     And your opinion is? You got to be awake around  
17                 here, things happen fast.

18                 A.     Yes, sir.

19                 Q.     Your opinion? I don't know if you heard what the  
20                 judge just said.

21                 A.     Yes, I did. I was trying to follow everything.

22                 Q.     Okay. You are allowed to give that opinion.

23                 A.     My opinion is there is a very close relationship, was  
24                 a very close relationship within the state and Monroe County  
25                 with regard to carrying out all of the various planned tasks

1 required under 380.05 of Florida Statutes and that the county  
2 was reacting to the directives of the state in carrying out the  
3 mandates of 380.05 and which included all of the various  
4 studies required of the land use plan and all of the contracts  
5 and/or grants entered into between the state and the county  
6 with regard to land use planning, and that the county on a  
7 regular basis reported to the state its progress in  
8 implementing the requirement of the state vis-a-vis land use  
9 planning for the entirety of the county.

10 THE COURT: One question, I'm sorry. Did that  
11 same relationship, same closeness continue throughout  
12 your tenure?

13 THE WITNESS: Yes, but I have to add a footnote if  
14 you would judge. That at many times it was highly  
15 politicized and contentious and Monroe County was  
16 dragged kicking and screaming into certain positions  
17 that they did not wish to take and there were many  
18 occasions when the relationship soured because of the  
19 politics.

20 THE COURT: Is that during your tenure or prior to  
21 your tenure or both?

22 THE WITNESS: A little bit of both but clearly  
23 during my tenure because of a change of the Board of  
24 County Commissioners.

25 THE COURT: Thank you.

1 BY MR. MATTSON:

2 Q. Who has the ultimate say on land development  
3 regulations in Monroe County; Monroe County or the State of  
4 Florida?

5 A. State of Florida.

6 MR. MATTSON: I think I'm winding up here but I  
7 hear head scratching.

8 Q. Were there times during your tenure and since your  
9 tenure when you have been involved with property owners of  
10 Monroe County when Monroe County was forced into positions by  
11 the state that it did not wish to take?

12 MR. LEHRMAN: Objection. Vague and --

13 MR. MATTSON: He already said that. I'm trying  
14 to --

15 THE COURT: Overruled.

16 MR. MATTSON: I'm trying to understand if this  
17 was --

18 BY MR. MATTSON:

19 Q. You said the state has the ultimate decision?

20 A. Uh-huh.

21 Q. Did this role -- and you spoke about contentiousness.  
22 Did this role, this relationship go so far as the state forcing  
23 Monroe County to adopt positions that it did not wish to take?

24 A. Clearly. I can give you an example. The road on Big  
25 Pine Key that former commissioner --

1 THE COURT: Time frame.

2 THE WITNESS: Time frame in 1988, '89. -- wished  
3 to repave on Big Pine Key and went out and did it and  
4 the state then forced the county to remove the fill they  
5 had put on the road for -- because the state felt that  
6 was development within a right-of-way that required  
7 their review. And there was contentiousness over a  
8 specific part of the 380 legislation that exempted  
9 maintenance of roads within rights of way. And it rose  
10 to a huge issue between Commissioner Litton and then  
11 secretary Pelham of the DCA. And the county was forced  
12 to remove fill from a road that had long been platted  
13 and approved.

14 There was another occasion when the state refused  
15 to approve the process by which minor scrivener's errors  
16 could be made in the land development regulations and/or  
17 maps.

18 There was a third instance where I had to  
19 negotiate the writing of the variance procedure in the  
20 Monroe County code because the state had refused in 1986  
21 to allow variances to the land development regulations  
22 because they wouldn't trust or did not trust the Board  
23 of County Commissioners. So I had to write that  
24 variance procedure because it was the first land  
25 development code that I had ever seen that did not have

1 a variance procedure. And I had to convince the state  
2 that the standards that I wrote were such that it would  
3 prevent the politics being entered into the variance  
4 process. Those are three examples.

5 BY MR. MATTSON:

6 Q. Who paid, if you know, for all the people and the  
7 research and the studies that went into the '86 plan and the  
8 changes after the '86 plan?

9 A. The state paid the largest amount.

10 Q. 60/40, 80/20; do you have any idea?

11 A. 70 percent.

12 Q. Was the state able to tell the county what it was  
13 going to do with that 70 percent?

14 A. We had specific contracts for how that money was to  
15 be spent, allocated, it was over a million dollars when I  
16 arrived in 1987.

17 Q. Did any state, was there any state involvement in the  
18 North Key Largo HCP process?

19 A. Yes. They provided staff review of all of the work  
20 that we were involved with. My staff was working with their  
21 staff on a regular basis. There was an HCP study committee  
22 that was formed that had members of state agencies on the study  
23 board.

24 Q. Is there a specific reason or specific individual or  
25 specific agency who you can identify that prevented the North

1 Key Largo HCP from coming into existence?

2 MR. LEHRMAN: Objection, Your Honor. There is no  
3 foundation for that question and it's not a relevant  
4 question. There has never been testimony that the state  
5 prevented it. The testimony was that the HCP was not  
6 implemented due to state and local government. The  
7 state was requiring the county to complete the HCP  
8 before it was adopted. That was the prior testimony.

9 THE COURT: And your question was?

10 MR. MATTSON: My question is was there any entity  
11 or person who was clearly the entity or person that  
12 prevented the HCP from being adopted?

13 THE COURT: Which is similar to the question I had  
14 asked.

15 MR. MATTSON: Would have ended the moratorium.

16 THE COURT: Right. Overruled.

17 BY MR. MATTSON:

18 Q. Who did it.

19 A. I'm trying to follow your question.

20 Q. Who killed the HCP?

21 A. Who killed the HCP? Jim, I can't identify a person  
22 who killed it. The atmosphere was poisoned from the top down.  
23 No one wanted to touch the HCP.

24 Q. When you say the top, where is the top?

25 A. The State of Florida.

1 Q. Didn't anyone in Monroe County want to get it  
2 adopted?

3 A. Clearly. There were land owners who wished to get it  
4 adopted. We were being pressured on a regular occasion by the  
5 land owners and by the county commission. I can remember  
6 commissioner Litton, commissioner Puto, not commissioner  
7 Stormont. Commissioner Stormont did everything he could to  
8 stymie the whole thing with the majority of the commission by  
9 vote. Directed Captain Brown, the county administrator to  
10 direct me to get it done. Never happened.

11 Q. Why didn't you get it done?

12 A. Because we could never get it past the planning  
13 commission. They listened to the objections of environmental  
14 groups, concerns by state agencies, US Fish and Wildlife  
15 Service, Fish and Game Commission. DCA who had concerns  
16 because they knew that the minute HCP was adopted it would  
17 allow some development. This I discerned from being here that  
18 there were those who did not want to see the HCP approved  
19 because it would allow development. Remember when I started  
20 this at the time HCP is an instrument to balance property  
21 rights protection and the need to protect environmental  
22 resources and rare and endangered species.

23 Q. So it never got balanced did it?

24 A. It never got balanced.

25 MR. MATTSON: No further questions.

1 THE COURT: Cross examination.

2 MR. LEHRMAN: Thank you, sir.

3 CROSS EXAMINATION

4 BY MR. LEHRMAN:

5 Q. What entity is responsible for actually passing the  
6 HCP? It's the county right?

7 A. Yes. And ultimately the state.

8 Q. The state passes the HCP or the state approves what  
9 the county has passed?

10 A. They approve what the county has passed.

11 Q. And the county never actually gave anything to the  
12 state to approve or disapprove did they?

13 A. That's correct.

14 Q. And you said you couldn't get it past the planning  
15 commission. Were you talking about the state planning  
16 commission or county planning commission?

17 A. County.

18 Q. US Fish and Wildlife is not a state agency?

19 A. No, they are federal.

20 Q. Local environmental groups, were any of these state  
21 groups or local grass roots efforts?

22 A. Statewide as well as locally. State Audubon for  
23 instance.

24 Q. No governmental environmental groups per se on that  
25 one?

1           A.     I don't think the government has environmental  
2 groups. I think they have agencies.

3           Q.     In addition to that there were certain county  
4 commissioners, Monroe County commissioners, who didn't want to  
5 see it passed, right?

6           A.     That's correct.

7           THE COURT: Can I ask a question?

8           MR. LEHRMAN: Yes, sir.

9           THE COURT: While the HCP is being drafted and you  
10 are trying to work to get it approved, is there any  
11 input in the drafting stage by the State of Florida?

12          THE WITNESS: Oh, certainly. We had staff members  
13 from DEP, Fish and -- Fresh Water Fish and Game  
14 Commission, DCA who were all working with my staff and  
15 with the study committee to draft the HCP. They  
16 provided input.

17          THE COURT: Was there ever a draft that was  
18 approved by state agencies that was taken to the county  
19 commission?

20          THE WITNESS: No.

21          THE COURT: So it never left, for lack of a better  
22 term, the laboratory to the county commission? In other  
23 words it was always in its negotiation phase and never  
24 reached the county commission in its entirety?

25          THE WITNESS: No, I can't say that, sir. It never

1 reached the county commission for a final vote on the  
2 HCP. It did not -- I'm trying to recall now. It never  
3 reached them for a vote, that I can recall.

4 THE COURT: And is that because all the agencies  
5 involved could not agree on an HCP, including local and  
6 state?

7 THE WITNESS: Yes.

8 THE COURT: Sorry for the interruption.

9 BY MR. LEHRMAN:

10 Q. Is there a committee that's been formed to do this  
11 HCP?

12 A. Historically there had been several committees.  
13 Stretching back to 1982 to then Governor Graham's executive  
14 order that completed the HCP study committee that led to the  
15 actual language that was put into the 1986 plan that then  
16 required the actual HCP and put some parameters and actually  
17 identified development potentials. Then the county commission  
18 created a local HCP study committee that was to advise staff  
19 and staff was to work with it to create an HCP to go to the  
20 planning commission, Board of County Commissioners then on to  
21 the state for approval.

22 Q. A local HCP was formed sort of as a pre-HCP  
23 committee?

24 A. No, I don't think I said that.

25 Q. I must have misunderstood.

1           A.     There was a study committee that was -- that Governor  
2     Graham caused to be formed. That was before the 1986 plan.  
3     That then provided input to the county, the state, to get, to  
4     actually write the regulations in 1986 that then required an  
5     HCP. In other words the HCP never got done before the '86.  
6     They rolled it into the '86 regulations. The '86 regulations  
7     require the HCP to be done. In order to do that the state said  
8     here is this amount of money, go do the HCP. The county formed  
9     a local study group, advisory group. Staff then at both state  
10    and county levels worked together to create the HCP.

11          Q.     So is it a safe assumption to make that this local  
12    HCP for the reasons that you have already stated could not make  
13    an agreement as to what would actually be proposed to the  
14    county commission to be voted on and approved and then sent up  
15    to the state for final approval; is that correct?

16          A.     It wasn't the purpose of the local committee to make  
17    that decision, no. They were advisory in nature. Staff  
18    attempted to take or did take the HCP to the planning  
19    commission on several occasions.

20          Q.     So it was the planning commission that would be  
21    voting on the HCP?

22          A.     Yes, they have to do that.

23          Q.     Are there any state governmental representatives on  
24    the local planning commission?

25          A.     No.

1 Q. You're familiar with the area of critical state  
2 concern statutory scheme, are you not?

3 A. Yes.

4 Q. What would you say is the primary purpose of the  
5 statute which creates the areas of critical state concern?

6 A. There is not one purpose. The purpose is embodied in  
7 the principles for guiding development. The preamble to the  
8 statute speaks of both natural and human resources. And the  
9 principles for guiding development, which I believe there are  
10 five in number, contain language against which each development  
11 approval ordinance, zoning, land use plan that's created by  
12 Monroe County is measured.

13 Q. I didn't mean to step on the end of your answer. Are  
14 you finished?

15 A. You can ask me another question.

16 Q. Do you recall what those five criteria are that are  
17 principles of guiding development?

18 A. I was going to get to that. One deals with the  
19 protection of the natural environment, the unique species that  
20 are found nowhere else in the continental United States. The  
21 second deals with the protection of the investments that the  
22 community has made in sewer, and water and utilities. Another  
23 protects, mentions the need to balance property rights.  
24 Another mentions the need to provide affordable housing,  
25 workforce housing -- it says affordable housing for the

1 community. I think I may have mixed up a couple in there. I  
2 would have to look at it. That in essence are the principles  
3 for guiding development.

4 Q. Is it a fair statement to say that there is no --  
5 that acquiring property cheaply through eminent domain is not a  
6 principle or a primary purpose of the statute which creates the  
7 areas of critical state concern?

8 A. I don't think I have ever seen any statute in any  
9 location written like that. But that having been said, the --  
10 never mind. The principles don't say that.

11 Q. And Monroe County was also ordered by law, by state  
12 law which applies to every county to write up and submit a  
13 comprehensive plan guide for growth in the county; is that  
14 correct?

15 A. Yes but you have to know the history of that. All of  
16 the other counties in the State of Florida were not so directed  
17 until 1985 which was several years after the directions  
18 provided to Monroe County under the 380 statute. 163 came into  
19 effect after the 380.

20 Q. 380 is also the areas of critical state concern?

21 A. Yes. Areas of critical state concern applies to  
22 three areas within the state; Appalachicola, green swamp and  
23 Monroe County.

24 Q. Is it also true that other areas were to be  
25 considered but they actually passed growth regulations such as

1 Hutchison Island and some others, Indian River County?

2 A. Yes. As a matter of fact, after I left Monroe County  
3 I -- A Thousand Friends of Florida basically told one of the  
4 counties in the north what would happen if they didn't adopt a  
5 growth management ordinance. And they were scared to death and  
6 adopted one because they didn't want to become an area of  
7 critical state concern.

8 Q. A Thousand Friends of Florida is a private  
9 not-for-private organization?

10 A. Yes, it is.

11 Q. It is not a governmental organization?

12 A. It is an environmental organization, yes.

13 Q. I think you stated that the purpose of the moratorium  
14 was to stop development until the habitat conservation plan and  
15 the comp plans could be instituted; is that correct?

16 A. The purpose of the moratoria was to stop major  
17 developments, not the continuation of single family  
18 developments, but major developments that comprise more than  
19 five acres. And -- until such time as the land development  
20 regulations and the comprehensive plan could be put in place.

21 Q. Now was the primary purpose of the moratorium to  
22 allow these properties in North Key Largo to be acquired  
23 cheaply the primary purpose?

24 A. I don't think you can say that on its face, no.

25 Q. The same with the comprehensive plan, that was not

1 its primary purpose either?

2 A. No, I don't think so.

3 Q. Have you ever seen or heard of any development plans  
4 or requests that had been submitted from the owners of the  
5 subject property that we are here for today? Did they ever try  
6 to officially develop this property or submit any plans or  
7 zoning changes or any sort of applications to do anything with  
8 the property?

9 A. Not that I know of.

10 MR. LEHRMAN: Nothing further. Thank you, sir.

11 THE COURT: Any redirect?

12 MR. MATTSON: May I see exhibit A.

13 MR. TOBIN: While Jim is looking at that, judge,  
14 did we ever find the one that is in the court file that  
15 we can have marked and put into evidence or not.

16 THE COURT: Not yet. Do you want to take a  
17 quick --

18 MR. TOBIN: Yeah, yeah. We may need it if we  
19 break and I hate to give up our last copy.

20 THE CLERK: If we mark it it will be separate from  
21 that and I cannot put it back where it came from.  
22 Anything that is marked in evidence goes into a separate  
23 expando. You pull it out of your attachment. So we are  
24 going to need a copy.

25 THE COURT: I was trying to be efficient.

1 MR. MATTSON: I think we have one or two more  
2 copies.

3 MR. LEHRMAN: So we wouldn't be saving a tree by  
4 not --

5 THE WITNESS: Soon we'll be able to scan all those  
6 things.

7 MR. LEHRMAN: That would be nice.

8 THE COURT: While looking for that, again going  
9 back to the issue of the HCP and I'm not sure I'm clear  
10 on the answer. The question that I have, it's a given  
11 that the HCP was never passed?

12 THE WITNESS: That's correct, sir.

13 THE COURT: The question that I have is that the  
14 failure of just local government, it sounds like your  
15 answer from the assistant attorney general that it was  
16 local government's failure?

17 THE WITNESS: That's a hard question to answer and  
18 I'm going to tell you why it's hard for me, is that  
19 Monroe County is unlike any place I have ever been  
20 before, practiced before in the fact that the  
21 relationship between the state and the county was so  
22 close. When you travel as a planner to any other place  
23 in the State of Florida and describe to your fellow  
24 professionals how the state has a relationship with  
25 Monroe County regarding development review and approval

1 of zoning ordinances and such, to a person, the well  
2 informed person, the response is incredulous because  
3 nowhere else is the state inserted into the process to  
4 the point it is.

5 And when I say is it a failure -- when asked is it  
6 a failure of the local government or the state  
7 government, I would say you can't just say it's either  
8 them or Monroe County. It's because the partnership and  
9 the relationship on a day-to-day basis and  
10 month-to-month basis was so close. If we would have had  
11 control, total control of the HCP process without the  
12 insertion of the state agencies, the state staff, the  
13 environmental groups all of that --

14 THE COURT: State staff, how are the state staff  
15 involved?

16 THE WITNESS: State staff were part of the study  
17 committee that I referred to that came along with the  
18 implementation of the HCP requirement. They worked with  
19 my staff on a day-to-day basis. They provided input.

20 THE COURT: On the drafting of the HCP?

21 THE WITNESS: On the drafting. We would send them  
22 copies of the HCP. Give us your requirements. It was  
23 required by the contracts with the state, you will  
24 coordinate with these state agencies.

25 THE COURT: They will come back with modifications

1 or objections?

2 THE WITNESS: They would come back with  
3 modifications, objections, comments and we would have to  
4 respond to those.

5 THE COURT: You would make appropriate changes?

6 THE WITNESS: We would make appropriate changes or  
7 say it wasn't appropriate.

8 THE COURT: Then the final product given to the  
9 local government to approve was actually a product of  
10 state input, local input and your staff's input?

11 THE WITNESS: Yes. And from a planning  
12 perspective as a professional that's the right thing to  
13 do. That that's the way it occurred.

14 THE COURT: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. MATTSON:

17 Q. Mr. Craig --

18 A. Yes, sir.

19 Q. -- I direct your attention to three documents in  
20 here, the governor's executive order from 1984, the letter from  
21 Percy Millison to Milton Mravic 1990 and the letter to Milt  
22 Mravic from Fish and Game Commission 1990 take a look at those  
23 and see if you --

24 THE COURT: Those items are contained in what  
25 exhibit for the record?

1 MR. MATTSON: Exhibit A.

2 THE COURT: Exhibit A for identification, has that  
3 been introduced now as an items?

4 THE WITNESS: No.

5 BY MR. LEHRMAN:

6 Q. One is an executive order of Governor Graham and the  
7 other two are letters from the head of the planning commission  
8 to two state agencies.

9 A. Okay.

10 Q. Now I know you weren't here in 1984 but you did  
11 testify that you were familiar with Governor Graham's executive  
12 order, right?

13 A. Yes.

14 Q. Did Governor Graham's executive order start the HCP  
15 process?

16 A. Yes.

17 Q. And didn't it give the state at least as much control  
18 over the HCP process as the county?

19 A. Yes because it had to be approved by the state.

20 Q. Now you have testified earlier that the planning  
21 commission couldn't, that you couldn't get this or you and the  
22 state couldn't get this to the planning commission. Were you  
23 familiar with the comments that were going from state agencies  
24 to the planning commission regarding the HCP?

25 A. Yes.

1 Q. Isn't it true that the state agencies were opposing  
2 the HCP?

3 MR. LEHRMAN: Your Honor, it calls for hearsay.  
4 There is not even anyone identified. Now we are just  
5 down to the state making comments. It's impossible to  
6 ascertain what the question is.

7 THE COURT: Rephrase your question, please.

8 BY MR. LEHRMAN:

9 Q. The second letter, the one page letter, who is that  
10 from?

11 A. That is from Percy W. Millison director of division  
12 of state lands to Bill Mravic, chairman, Monroe County Planning  
13 Commission.

14 Q. State land is part of DNR?

15 A. That's correct.

16 Q. Which is now part of DEP?

17 A. That's correct.

18 Q. What is the date on that letter?

19 A. June 6th, 1990.

20 Q. Were you aware this correspondence was flowing to the  
21 county planning commission?

22 A. Yes.

23 Q. Isn't that letter evidence of state opposition to the  
24 HCP?

25 A. Yes.

1 Q. Isn't their opposition really because it will affect  
2 their ability to buy land on North Key Largo?

3 MR. LEHRMAN: May I see the letter, sir?

4 MR. MATTSON: It's in your exhibit.

5 THE WITNESS: Do you want to see both letters?

6 MR. LEHRMAN: Just the one you just referred to.  
7 Is it okay, Your Honor..

8 THE COURT: While we are looking for that we are  
9 coming up on 5:00. Let's talk about scheduling. How  
10 much longer do we have with this witness?

11 MR. MATTSON: This is it as far as I'm concerned.  
12 I'm on redirect. I'm done.

13 THE COURT: Are you going to ask for any other  
14 cross -- recross?

15 MR. MATTSON: Maybe I can probably just ask the  
16 one question that goes with this now if that's okay.

17 MR. LEHRMAN: Sir, what date did you leave the  
18 employ of the county of Monroe?

19 THE WITNESS: February 21st, 1990.

20 MR. LEHRMAN: Your Honor, this letter, the  
21 comments are well after that. I would object to its  
22 content, this witness's interpretation of that letter.

23 MR. MATTSON: He was here. He was a planning  
24 consultant. He simply shifted from public sector to  
25 private sector. I would imagine at this time if I asked

1 him, he's representing property owners.

2 THE COURT: Objection sustained as to that item.

3 Let's talk about scheduling. Do you have another  
4 witness?

5 MR. MATTSON: No.

6 THE COURT: Are you reading any depositions or  
7 anything else into the record?

8 MR. MATTSON: Yes. Depositions of Swift and  
9 Sorensen.

10 THE COURT: And then the State of Florida has?

11 MR. LEHRMAN: I have one deposition to read into  
12 the record as well as closing arguments as well.

13 THE COURT: So we are not finishing today.

14 MR. LEHRMAN: Obviously not. As far as getting  
15 all of the evidence in I would tender the deposition and  
16 rather than publish it if there is no objection and I  
17 would offer the same stipulation to these two as well so  
18 the court can simply read the depositions rather than  
19 have us read them to you. That would save a little  
20 time.

21 THE COURT: Let's finish with Mr. Craig here so he  
22 can go home.

23 MR. MATTSON: You are saying just put them in, not  
24 deal with them?

25 MR. LEHRMAN: We'll deal with that in a second.

1 The judge wants you to finish up.

2 THE COURT: Let's finish with this witness and  
3 we'll talk about the rest of the schedule.

4 MR. MATTSON: I believe I have no further  
5 questions.

6 MR. LEHRMAN: Nothing further, Your Honor.

7 THE COURT: Thank you. You may step down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Counsel for the defendants call your  
10 next witness.

11 THE CLERK: He has exhibits.

12 MR. LEHRMAN: No, we have agreed the copies can be  
13 the same as the originals.

14 MR. TOBIN: This is the second request for  
15 compulsory judicial notice and this is the  
16 Administration Commission's minutes and this needs to be  
17 marked as exhibit A.

18 THE CLERK: Okay. I'll do that for you.

19 THE COURT: Mr. Mattson call your next witness.

20 MR. MATTSON: The defendants have no live  
21 witnesses. We do have two depositioned that we are  
22 going to read in but as Mr. Lehrman suggested we could  
23 just submit them and refer to them.

24 THE COURT: Did you intend for the court to read  
25 them outside of the presence of the attorneys?

1 MR. LEHRMAN: You can read them as far as I'm  
2 concerned, whenever it is convenient.

3 MR. TOBIN: They are very short depositions,  
4 judge. I could read them to you. I have highlighted  
5 some portions of it. I can summarize both Commissioner  
6 Swift and Commissioner Sorensen's testimony. Both of  
7 them will basically -- and you could read it for  
8 yourself -- both of them will testify that the state put  
9 on a lot of pressure --

10 THE COURT: Why don't we just save that for your  
11 closing argument. I will read those depositions outside  
12 of the presence of the attorneys on my own time if there  
13 is no objection.

14 MR. MATTSON: They are very brief.

15 MR. TOBIN: Then I will go and ask the court to  
16 accept the deposition of Kenneth Sorensen and have it  
17 marked and the deposition of Edwin O. Swift. Both  
18 originals have been tendered to the clerk.

19 THE COURT: Any objection by the state?

20 MR. LEHRMAN: No, sir.

21 THE COURT: Does that conclude the presentation by  
22 the defense of their evidence?

23 MR. MATTSON: Yes, it does.

24 THE COURT: Counsel for the state have a  
25 deposition you want me to consider?

1 MR. LEHRMAN: Yes, sir the deposition of Nancy  
2 Linnan. And it's our understanding that that has been  
3 filed with the court. And we would move that in at this  
4 time.

5 THE COURT: Any objection to the deposition of  
6 Nancy Linnan?

7 MR. MATTSON: No.

8 THE COURT: State's exhibit number 1. Is the  
9 state moving any other exhibits in?

10 MR. LEHRMAN: No, sir. We rely on argument.

11 THE COURT: There is no live testimony?

12 MR. LEHRMAN: No, sir.

13 THE COURT: No witnesses to be called?

14 MR. LEHRMAN: No, sir. We think the law is  
15 confusing but clear.

16 THE COURT: Do you want to do closing arguments  
17 now -- I haven't yet read the depositions -- or come  
18 back for closing arguments?

19 MR. LEHRMAN: Your Honor, since I do have to  
20 travel the furthest I would normally say I would like to  
21 give the closing argument now; however, because of the  
22 importance of this particular issue I would prefer to  
23 come back and argue it when we are all fresh.

24 MR. MATTSON: That's fine. We are right here.

25 THE COURT: Okay. Who wants to reschedule this

1 with my JA for closing arguments? I can tell you I  
2 start a two week trial next week. When are you set for  
3 trial?

4 MR. LEHRMAN: We are not. So there is no urgency.

5 MR. TOBIN: Which time?

6 THE COURT: You are going to be set for trial  
7 soon.

8 MR. TOBIN: I don't think it's showing up on your  
9 computer judge because the state bought it.

10 MR. MATTSON: No, they closed the case and  
11 reopened.

12 THE COURT: It will start showing up on my tickle  
13 case which is a 1995 case which is going to send a  
14 shiver down my spine. So you'll be getting a trial  
15 order quickly.

16 MR. TOBIN: We can't have the appraiser doing  
17 their job until you make a ruling to which land  
18 development regulations they use.

19 THE COURT: I plan on doing that after your  
20 closings.

21 MR. MATTSON: What I'm thinking we could submit  
22 written closing arguments and give ours a page limit and  
23 time limit. What do you think?

24 MR. LEHRMAN: Your Honor, I prefer to do them  
25 live. I may submit a memorandum. There may be things

1           that will come up that the court has questions that I  
2           would like to be able to answer.

3           THE COURT:   Twenty minutes a side, thirty minutes  
4           a side?

5           MR. MATTSON:   Let's have an hour.   Some place  
6           we'll get --

7           THE COURT:   Half hour a side?   The more time you  
8           ask for the further in time.   If you ask for an hour I  
9           can probably squeeze an hour in now.   If you ask for two  
10          or three hours --

11          MR. MATTSON:   February or March.

12          THE COURT:   You are looking at Christmas Eve.

13          MR. MATTSON:   You know you do that to us every  
14          year.   We are up to that trick.

15          MR. TOBIN:    It's going to be up to Paul's travel  
16          schedule.

17          MR. LEHRMAN:   We'll work out my schedule.   We just  
18          need to work out how much time.

19          MR. MATTSON:   I think 20 minutes and we can submit  
20          a memorandum.   That will be the easiest thing to do.

21          THE COURT:    That way we only need a 45 minute  
22          block.   Okay.   Anything further before we close for the  
23          evening?

24          MR. LEHRMAN:   Thank you, judge.

25          MR. MATTSON:   I don't think so.

1 THE COURT: Would you like my JA to set it, notice  
2 you all or do you want to try to set it with your  
3 calenders and mine?

4 MR. LEHRMAN: I prefer to try to schedule it  
5 first.

6 MR. MATTSON: I have travel both in October and  
7 December. Judge Payne is going to reset Galleon Bay  
8 which is week long trial.

9 THE COURT: Let's assume I hear this case in  
10 November, early December. How much time do your  
11 appraisers need from the time you get a ruling from me.

12 MR. TOBIN: We have to depose them too judge,  
13 also.

14 MR. MATTSON: I can tell you what my appraiser  
15 always tells me and I have never had him -- we have been  
16 using Bob Gallaher since early '90's. He never can get  
17 anything done in less than four weeks.

18 THE COURT: Can I give you a February trial date  
19 now?

20 MR. MATTSON: Yeah, I think so.

21 THE COURT: State?

22 MR. LEHRMAN: February is kind of a tight month,  
23 but okay. I have other things that are scheduled then.

24 January I can do and March is wide open. February --

25 THE COURT: I'll give you March if March will make

1           it easier.

2                   MR. TOBIN:  It's a 12 person jury too.  Would you  
3           consider less than 12; 8, 10?

4                   MR. LEHRMAN:  No, we are not permitted to do so,  
5           I'm sorry.

6                   MR. TOBIN:  Okay.

7                   MR. LEHRMAN:  I have no authority to.

8                   MR. MATTSON:  February is out for you.

9                   MR. LEHRMAN:  If that's the only time the court  
10          can hear us.

11                   THE COURT:  I can make you number one in March  
12          because it is so far ahead of time.  This is a 1995  
13          case.

14                   MR. LEHRMAN:  Special setting, that would be  
15          terrific if we could do that.

16                   MR. MATTSON:  Yes.  There is nothing on my March  
17          calendar.

18                   THE COURT:  Week, four days?

19                   MR. LEHRMAN:  This will have to be about a week,  
20          judge.

21                   MR. TOBIN:  Okay.

22                   MR. LEHRMAN:  I wish it would be less but I see  
23          this as a one week trial.

24                   THE COURT:  I am also sending you off to  
25          mediation.  You know that.

1 MR. TOBIN: I guess once you decide the zoning --

2 THE COURT: All go back to mediation right before  
3 trial.

4 MR. LEHRMAN: We need to take our depositions and  
5 see how good and bad things are. Things change  
6 sometimes.

7 THE COURT: All right gentlemen, thank you.

8 MR. LEHRMAN: Thank you, Your Honor.

9 MR. TOBIN: Thank you, judge.

10 (Proceedings concluded at 5:00 p.m.)

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CERTIFICATE

I, KATHLEEN A. FEGERS, Florida Professional Reporter and Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

Dated October 6, 2006.

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KATHLEEN A. FEGERS, FPR, RPR

MONROE COUNTY COURT REPORTERS

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