



# Flagler County Board of County Commissioners Workshop and Special Meeting

Wednesday, February 27, 2019 at 2:00 a.m.

Emergency Operations Center, Building 3, 1769 E. Moody Blvd., Bunnell, FL 32110

## Agenda

1. Call to Order
2. Pledge to the Flag and Moment of Silence
3. Welcome: Flagler County Board Chair
4. Discussion: Consider Options Report for Locating Captain's BBQ and Bait & Tackle at Bing's Landing per Commission Direction; Determine Wastewater Service to Bing's Landing; and Conclude Pending Administrative Appeal.
5. Public Comment
6. Adjournment of Workshop
- 7. Convene Special Meeting for Actions**
8. Adjournment of Special Meeting

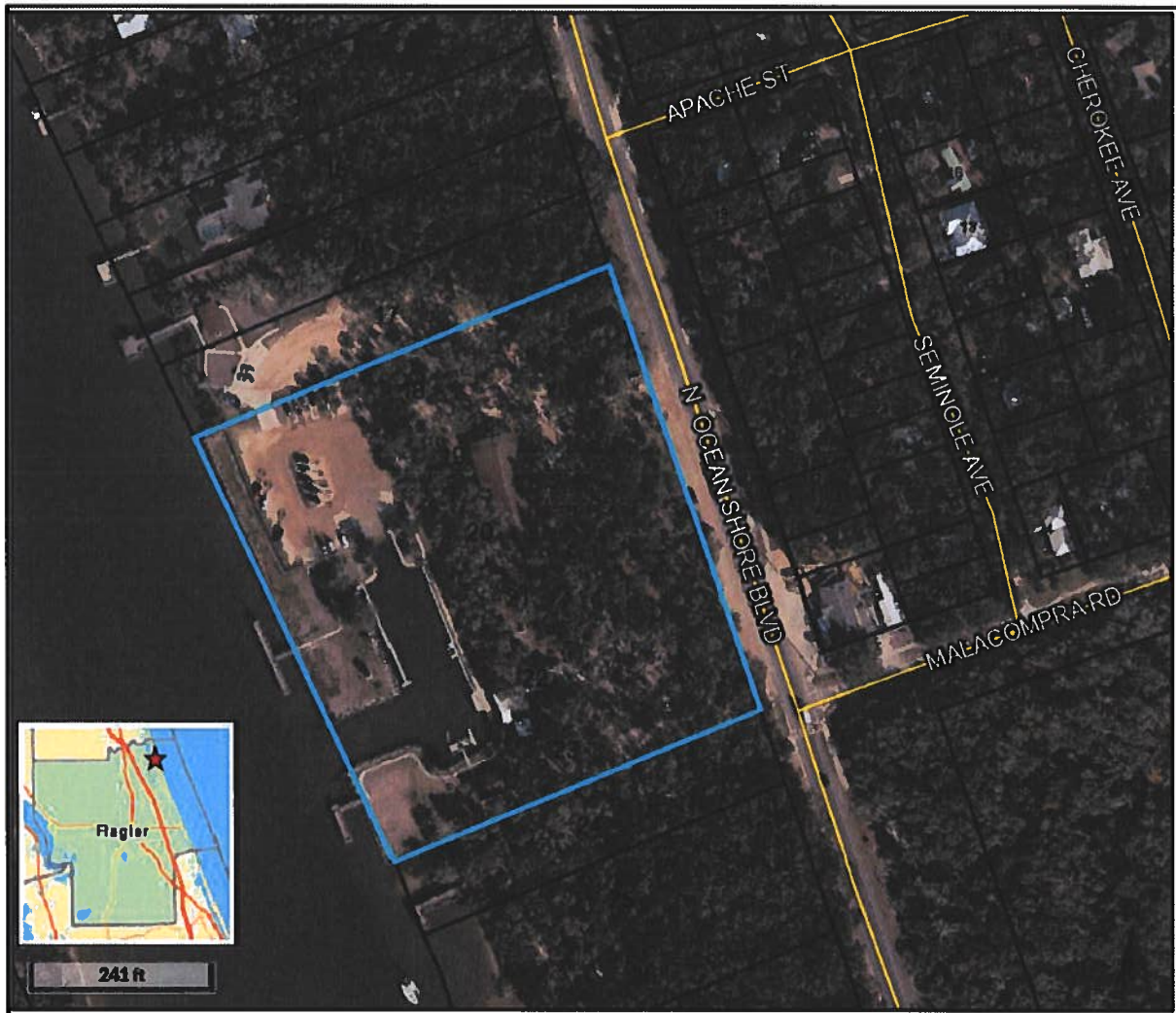
Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
WORKSHOP AND SPECIAL MEETING AGENDA ITEM**

**SUBJECT:** Consider Options Report for Locating Captain's BBQ and Bait & Tackle at Bing's Landing per Commission Direction; Determine Wastewater Service to Bing's Landing; and Conclude Pending Administrative Appeal.

**DATE OF MEETING:** February 27, 2019

**OVERVIEW/SUMMARY:** This matter follows up the Board's direction to staff at the January 7, 2019 workshop to further assess certain options related to Captain's BBQ and Bait & Tackle (Captain's), the County's tenant at Bing's Landing. Below is the parcel which constitutes the original purchase in 1989:



More specifically, the consensus of the Board at the workshop was for staff to further evaluate Options 1, 3, and 4. Option 1 is to repair/rebuild the facility presently housing Captain's. Option 3 is to construct a new building north of the present building closer to the center of the parcel, adjoining the historical and archaeological MalaCompra Plantation pavilion. Option 4 is to construct a new building at a location southwest of the

present facility in a relatively open area closer to the Intracoastal. In the time since the workshop, staff has been able to gather additional information regarding each of these options.

### **Review of Options to Facilitate Site Planning by County Staff and Captain's**

As a preliminary note, all the costs associated with the development of the site ultimately selected by the Board, such as soil testing, engineering, and stormwater, will be borne by the tenant, along with any specific site requirements identified by the Board, including tree planting. All of the plans for the proposed construction will be done in compliance with all codes and permitting requirements.

The plans will also be subject to review by the Technical Review Committee to ensure all relevant issues are vetted by appropriate staff members and agencies including the Fire Marshal and the Health Department. This meeting will be open to the public, and the results will be reported to the Board. In addition, the Board's selection of the option does not entail a determination of consistency with the Comprehensive Plan or the Land Development Code, which task is the responsibility of the Planning and Development Board when it reviews the Site Development Plan that will be developed based on the Board's selected option. Consequently, this workshop and special meeting is not subject to the quasi-judicial standards for land use decisions.

Regardless of which option the Board chooses, the site requirements for parking, lighting, landscaping, signage, sidewalks and hardscape, extensions of utilities, and the siting of the park dumpster and its enclosure are the sole responsibility of the County working in conjunction with the tenant. These requirements remain outside of the specific scope of the lease with the tenant, although the tenant is dependent upon these improvements being in place for its operations. The County will continue to refine the placement of these regardless of the option chosen and will address them throughout the development process. To be clear, however, this workshop and special meeting is not to determine issues about the lease, such as seating capacity, lease term length, rental amount, serving of alcoholic beverages, hours of operation and so forth.

The Board's selection of the option is needed now, in order for the rest of the process to proceed. Once you make this choice then Captain's owners know which option to plan and design for. For example, engineering to assess how to comply with codes and elevate the structure to mitigate for storms/flooding. Once that work is completed, the owner will then need to go to a public hearing before the Planning Board and thereafter to the Board for its review and a decision on the terms and conditions of the lease.

### **Overall Map of All Options**



### Option 1 Review

Mr. Mike Dickson, General Services Assistant Director, who is a licensed general contractor who has built and supervised many County construction projects in the parks, evaluated the present building. Consulting with him was Mr. Mark Boice, Chief Building Official for Flagler County. Under the Florida Building Code, Mr. Boice's determination are binding on behalf of the County for construction under the Code within the unincorporated County, subject to the jurisdiction of any state permitting agencies, such as for wetlands, and fire safety code matters that are left to the Fire Safety Inspector. The problem with the present building is that its original, roughly 1,590 square feet was constructed in the 1950's before codes were in effect. Some portions of the single floor facility prior to the County's ownership were repaired or modified, along with the surrounding complex construction associated with the fish camp and marina. But there are no permits or building plans on file with Flagler County and the sellers had none to provide at closing, either for what is now the restaurant structure or any other improvements located on the parcel. That includes no engineering drawings or surveys of ground elevations for the site.

The original structure housing Captain's is not built to withstand stormwater runoff, wind loads, and resilience to storm flooding from the Intracoastal. Presently, a portion of the concrete foundation is below the surrounding ground elevation. This means when there is sufficient stormwater or flooding, the water inundates the concrete subfloor. Universal recommended the installation of a sump pump to keep water out. However, this is wholly inadequate to address serious storm events that flood the land. Additionally, any knock out of power would render it useless during a storm or other condition when the pump needs to operate. Notably, the site did flood in Hurricanes Matthew and Irma.

Mr. Dickson's report, attachment #1, notes that the cost of repairs will exceed 50% of the building's value which would require construction to meet all current codes, thus requiring retrofits. Mr. Dickson also notes that the concrete blocks on which the wood framed walls sit cannot be modified as is to become stem walls. He also notes that the building will

need to meet increased wind speed requirements. His estimate of the cost of repair/rebuilding parts of the facility is \$462,000.

As landlord, the County is obligated under the lease to provide a facility for Captain's. Option 1 would cause an interruption of the existing restaurant operation because repairs could not be completed incrementally or when the business was closed (overnight) so as to maintain continuity of operations. The restaurant would be forced to either close or relocate its operations for the duration of construction. The County would seek an interim solution to fulfill its obligations to the tenant. However, temporary relocation is not feasible since there are no available vacant restaurant buildings in close proximity to Bing's Landing. As advised by the County Attorney, in the event of termination of the lease or action by the County as landlord that disrupts the tenant's operations, the County may be liable for business interruption damages. These are damages for loss of expected revenue/profit. In addition, the losing party in any suit would be responsible for all attorney's fees whether the dispute is settled through mediation or litigation per the terms of the present lease.

If the business were forced to close during reconstruction, Captain's could also claim damages to their goodwill. On the other hand, Option 1 would be most preferred by some concerned citizens in the community since they believe that it would have the least impact to Bing's Landing Park.

### Option 3

The relocation of Captain's to the center of the park is the option presently approved by the Planning and Development Board. If the Board selects this option, trees would have to be removed to make room for the new building. In addition, the viewshed of the waterway would be negatively impacted. Buried artifacts from Joseph Hernandez' plantation might be compromised. However, the Captain's operation would be uninterrupted, and the tenant would bear the cost of constructing the building, which will be owned by the County.

### Option 4

This option would involve constructing a new building in the clear area west of the current location, closer to the Intracoastal and the south tree line of the park. As in Option 3, Captain's would pay the cost to construct the building which would be owned by the County. Construction at this site would impact the viewshed of the waterway, but less so than Option 3. In addition, no archaeological artifacts would be compromised, as this was a fill site. There also would be minimal tree removal, and Captain's operations would be uninterrupted. Weighing against this option is that it would require the relocation of the County's most popular pavilion. The pavilion, however, was not built to current wind load and other requirements and is in need of replacement as a best alternative. Even if Option 1 or 3 is selected, the pavilion needs to be replaced at some point in the near term.

If Option 4 is selected, the tenant will submit a Site Development Plan for review by the Technical Review Committee and review and approval by the Planning and Development Board, subject to review and comment by the A1A Scenic PRIDE Committee. Once approved, the Site Development Plan will become an exhibit to the lease, and the lease will be scheduled for review and approval by the Board of County Commissioners.

### **Temporary Sewer Connection to CDD**

Whichever option is selected by the Board, the County would benefit from a temporary connection to the sanitary sewer system owned and operated by the Dunes Community Development District (CDD). County staff have had preliminary discussions with their CDD counterparts regarding the feasibility of a temporary connection to the CDD's system until the permanent connection to the City of Palm Coast's sewer collection system is available. Abandonment of the septic tanks on the Bing's parcel – instead of installation of new septic systems – would further the County's objective of improving water quality in the Intracoastal Waterway. Any temporary connection would require the agreement of the CDD's Board of Supervisors, including stipulations that the County bear the full cost of any temporary connection and its future abandonment. A pro rata share of these costs can be passed along to the vendor/tenant.

In meetings and discussions among professional staff, the County's Land Management Division, Parks Department, General Services and the County's Public Health Agency recommends connecting to central wastewater. The current septic system is almost 30 years old. While there is no indication of system failure, no observable surface leaching, or any odors detected that might indicate a failure, rebuilding a new septic system would be roughly as costly as a central connection and would require continued maintenance and responsibility for a system type that is known to leach nutrients into the waterways.

The request here is to authorize staff to pursue a connection wherein all costs could be identified and compared to a rebuilding a septic drain field system. The Commission's authorization does not authorize any actual connection or entering into binding agreements.

### **Pending Administrative Appeal**

Section 1.09.02 of the Land Development Code (LDC), places the responsibility for interpretation of the LDC with the Planning Director. The Planning Director has determined that there is no avenue of appeal to the County Commission of the Planning Board's approval of the Site Development Plan. The County Attorney concurs in this conclusion. Obviously, the public may comment on this issue, but the Commission has no appellate review of the disposition of the appeal. If there is to be a review, the appropriate venue is with the courts and not with the Board. The County Attorney points out further that the decision complained of by the Planning and Development Board was in effect rescinded by the Board's vote, that the individuals seeking the appeal have already presented their arguments at the last workshop and through their paper submissions, and other public meetings and hearings remain on the matter.

**DEPT./CONTACT/PHONE #:** County Attorney's Office/AI Hadeed/386-313-4005; General Services/Heidi Petito/386-313-4020; Land Management/Tim Telfer/386-313-4066; and Planning & Zoning/Adam Mengel/386-313-4065.

**RECOMMENDATION:** Request the Board:

1. Select Option 4, the relocation of Captain's BBQ and Bait & Tackle to the site located southwest of its present location, including:
  - a. the relocation of the pavilion as necessary; and
  - b. restoration of the present Captain's BBQ site to green space, with native plantings.

2. Authorize staff to pursue temporary connection of sanitary sewer to the Dunes Community Development District for Bing's Landing, and bring back plans for the Board's review and approval regarding:
  - a. any agreements, easements, permits, and related documents for temporary sanitary sewer connection;
  - b. vacation and abandonment of existing onsite sewage disposal systems (septic tanks) upon Board approval of a connection to the Dunes CDD sanitary sewer system;
  - c. siting on the Bing's Landing parcel of a lift station, if needed, to serve the temporary connection and built to City of Palm Coast specifications in anticipation of the future permanent connection to the City's central sanitary sewer collection system; and
  - d. abandonment and restoration of the temporary connection with the CDD within six months of a sanitary sewer line extension completed by the City of Palm Coast within the State Road A1A right-of-way adjoining Bing's Landing.
  
3. Authorize staff to include in any lease with Captain's to reflect the selected option and include within the terms or through a separate instrument in a format approved by the County Attorney, the additional requirements of the selected site, including:
  - a. the tenant shall be responsible for all the costs associated with the development of the site selected by the Board, such as soil testing, engineering, and stormwater; and
  - b. all of the plans for the proposed construction will be completed by the tenant in compliance with all Codes and permitting requirements.

**ATTACHMENTS:**

1. Report from Mike Dickson (Option 1)
2. Planning Director's determination (regarding the appeal of the Site Plan)

## General Services

1769 E. Moody Blvd, Bldg. 5  
Bunnell, FL 32110



[www.flaglercounty.org](http://www.flaglercounty.org)

Phone: (386) 313-4020

Fax: (386) 313-4120

February 21, 2019

### Bing's Landing - Captain's BBQ Property Condition Assessment Report - Rebuild Project Summary

The purpose of this summary is to provide you with an in-house assessment for the rebuild in-place cost and schedule, for the existing restaurant building located at 5862 North Oceanshore Blvd., Palm Coast Florida 32137.

Per the revised Universal Engineering, Property Condition Assessment Report from February 8, 2019, the original single story 1590 sq. ft. building was constructed in the 1950s. Since there are no permits or other records for this structure and the local construction requirements are unknown, it will require invasive testing to establish the construction methods used to tie the concrete slab on grade to the concrete block stem walls.

In Section II, the assessment states that, "The concrete subfloor showed evidence of flooding and ponding water, proper drainage cannot be accomplished because the concrete is at an elevation below the elevation around the outside of the building. Several areas of the flooring and subflooring are soft and pliable and failure is imminent. Full replacement of the floor system is required to correct deficiencies. Replacement needs to include the installation of a drainage system and a sump pump to keep area dry. Exterior ventilation would need to be installed."

Whereas I agree with the finding of the investigation, I disagree with the method in which they propose to remediate the issue because of flooding that occurred from Hurricanes Matthew and Irma that inundated the concrete subfloor and would best case, overwhelm a sump pump, worst case, due to a loss of power, render it useless.

During renovation work completed in 2012, it was determined that the concrete block wall, that the wood framed wall sits on top of is lacking reinforcement that would allow it to be used as a stem wall that can be filled with clean dirt, compacted and brought to grade where a concrete floor would be poured to meet the existing finished floor level in the restaurant. There are issues that make this an unsound approach.

- Because of the width of the 8-inch seal plate equaling the width of the concrete block, the seal plate would have to be removed to retrofit reinforcement bars into the concrete slab.
- The upper most concrete blocks are, "regular" 8"x8"x16" block. To utilize them as "foundation" blocks, we would have to cut them two ways, 4" vertically and 4" horizontally, which results in an "L" shaped notch that will accept concrete from

Charles Ericksen, Jr.  
District 1

Greg Hansen  
District 2

David Sullivan  
District 3

Joe Mullins  
District 4

Donald O'Brien, Jr.  
District 5



the floor. Foundation blocks are used to connect the floor through the walls to the foundation.

With both of these issues, it will be necessary to demolish 970 sq. ft. of the original 1590 sq. ft. existing structure.

A 360 sq. ft. "smoker" area expansion was added to the original 1590 sq. ft. building in 2012. This area has since been enclosed, climatized and turned into a prep kitchen. The finished floor elevation is 6.683 NAVD88; per Florida Building Code, this floor level must be brought up to match the restaurant's finished floor of 8.1 NAVD88. To accomplish this, it would be necessary to demolish the 360 sq. ft. prep kitchen and rebuild to the higher finished floor level.

**Florida Building Code,  
Building Section 1612.2 Definitions SUBSTANTIAL DAMAGE-**

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal 50 percent of the market value of the structure before the damage occurred.

**Florida Building Code,  
Building Section 1612.2 Definitions, SUBSTANTIAL IMPROVEMENT-**

Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair started.

This building is currently insured with a replacement value of \$92,118.00 (which does not include building contents). Per the Florida Building Code, the proposed remedial action would affect the existing structure beyond the 50 percent market value and trigger the 2017 Florida Building Code requirements for the entire structure. To meet the 2017 Florida Building Code requirements, it would be necessary to demolish the structure and rebuild per current code. The projected cost of reconstruction is estimated at \$462,000.00.

Mike Dickson  
Assistant General Services Director



---

DATE: February 13, 2019

TO: Al Hadeed, County Attorney

FROM: Adam Mengel, AICP, Planning Director

SUBJECT: APPEAL OF PLANNING AND DEVELOPMENT BOARD DECISION  
APPLICATION #3156 – CAPTAIN’S BBQ SITE PLAN IN A PUBLIC USE

As provided at Flagler County Land Development Code (FCLDC) Section 1.09.02, the Planning Director shall have the responsibility for interpretation of the “standards, regulations and requirements of this Code, but shall not be construed to include interpretation of any technical codes adopted by reference in this Code, nor be construed as overriding the responsibilities given to any commission, board or official named in other sections or articles of this Code.” (FCLDC Sec. 1.09.02).

Regarding the review of Application #3156 by the Planning and Development Board, the Land Development Code requires site plan approval for new structures on an existing Public Use site:

“Public or semipublic uses existing at the time of the effective date of this article and as indicated on the Land Use Map of 1985 are hereby legally established as conforming public and semipublic uses. *Modifications that involve additional structures or improvements on existing or approved sites shall require site plan review by the planning board.* Expansion of public or semi-public uses which include additional land shall require reapplication and meet all requirements under this section 3.06.05.” (FCLDC Sec. 3.06.05.B.2, emphasis added).

The County purchased the Bing’s Landing parcel in 1989 (Official Records Book 408, Page 596, Public Records of Flagler County, Florida). The effective date of The Land Development Code of Flagler County is March 18, 1991 (FCLFDC Sec. 1.14.00). The Board of County Commissioners approved the initial lease with Captain’s BBQ and Bait & Tackle on June 6, 2011 (Agenda Item #7B), establishing the concessionaire’s agreement through the lease and approving the use of the existing structure on the established Public Use as a restaurant, a use which remained undisputed until the filing of the appeal to Application #3156.

The new structure and associated improvements relocating Captain’s BBQ and Bait & Tackle from its present location to a new structure located on the Bing’s Landing park site constitutes – through the plain text interpretation of the Flagler County Land Development Code – an additional structure or improvement on an existing Public Use site requiring site plan review by the Planning and Development Board. The appellants confuse the meaning of the term “sites” in FCLDC Sec. 3.06.05.B.2, as quoted above. A new location for Captain’s BBQ located on the same parcel as the original structure is not “additional land” for purposes of modifying the approved Public Use under the Land Development Code provision. The Flagler County Land Development Code is explicit in its distinction between new structures on existing Public Use sites and new uses or new additional lands, with both new uses and new lands requiring Public Use review and recommendation by the Planning and Development Board and review and approval by the Board of County Commissioners: no such requirement exists for additional structures on existing Public Use sites. Hypothetically, had the application been to construct the new restaurant

building at an entirely different park, the Board of County Commissioners would have to give the final approval.

The appellants also raised the issue of use, concluding that the Planning and Development Board had erred by approving a new use – the expansion of the restaurant – through the site plan approval, adding that the restaurant’s approval was not in conformity with the County’s Environmental Sensitive Lands (ESL) Program. While I am not the authority tasked with administration of the County’s ESL Program, I believe that the varied use of Bing’s Landing supports at least two specific ESL Primary Program Objectives:

“e) Promote economic development through the creation of nature tourism property, infrastructure, and opportunities.”

and

“f) Promote appropriate public use and enjoyment of acquired lands including public access to water bodies for recreation activities that are consistent with ESL stewardship principles.” (Flagler County Environmentally Sensitive Lands Land Acquisition Manual, page 10).

As asserted by the appellants, the restaurant is a nonconforming use inconsistent with the County’s ESL Program and therefore bound to the Land Development Code’s treatment of the expansion of nonconforming uses. The Board of County Commissioners approved the restaurant use at Bing’s Landing through the Board’s 2011 lease approval, and ratified its previous action through the 2015 lease amendment. Through the Board’s 2011 and 2015 actions approving the restaurant use, the appellants’ claim of nonconforming use is irrelevant: the Board approved the restaurant use in conjunction with the Captain’s BBQ lease approval. The section of the Land Development Code pertaining to nonconformities does not apply.

Further, the appellant alleges that the Land Development Code procedures were not followed as to notice; however, as the appellant is aware, no legal notice requirement for site plans adding additional structures within an established Public Use is listed in the Flagler County Land Development Code (FCLDC Sec. 2.07.00.D). Notice was not required to be posted at the site, published in the County’s newspaper of record, or provided by U.S. Mail to neighboring property owners. Staff posted the Planning and Development Board’s agenda inclusive of Application #3156 as is done with all public meetings under the Sunshine Law. Public comments were made by some of the appellants as part of the Planning and Development Board’s public hearing: the irony is not lost that the same appellants that claim that the County’s public notice requirements were not followed are the same people who appeared and commented as part of the public hearing.

In addition, prior to the Planning and Development Board’s hearing, Application #3156 was on the Technical Review Committee’s October 17, 2018 meeting agenda and the A1A Scenic PRIDE Committee’s October 26, 2018 meeting agenda, both of which were included on their respective websites and otherwise included on notification lists to subscribers seeking public notification of upcoming meetings: in short, the public was not unaware of the pending site plan request.

Finally, concerning the specific appeal rights for Application #3156, the Land Development Code is silent. Seemingly analogous application types – variances and special exceptions, where the Planning and Development Board retains final action – are appealable to the Board of County Commissioners within thirty (30) days of the rendering of the Planning and Development Board’s decision (FCLDC Sec. 3.07.03.C); however, site plans are not explicitly included here or elsewhere in the Land Development Code’s listing of appealable decisions.

It is my determination that:

1. The review and approval of the site plan (Application #3156) by the Planning and Development Board was appropriate (FCLDC Sec. 3.06.05.B.2).
2. No onsite public notice of the Planning and Development Board’s review of the site plan (Application #3156) was provided and no onsite public notice was required (FCLDC Sec. 2.07.00.D). Public notice was provided in accordance with the Sunshine Law.
3. The restaurant use at Bing’s Landing has been approved by the Board of County Commissioners through the lease approval in 2011 and the lease modification in 2015: approval by the Planning and Development Board of the site plan (Application #3156) did not constitute an expansion of a nonconforming use (FCLDC Sec. 3.02.04).

I hope that this information is helpful and please contact me with any questions.