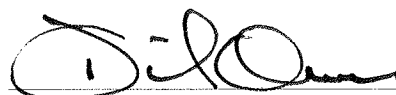


MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: September 14, 2007

TO: Board of County Commissioners

FROM:



David M. Owen
County Attorney

RE: **Requests for Non-Binding Referendum on Incorporation from two areas of the Unincorporated County; Lehigh Acres and Estero**

Commissioners,

Recently, and since the establishment of the Presidential Primary Election in the State for January 29, 2008, there have been two (2) requests brought forward from the Lehigh Acres and Estero areas of the County for non-binding referendum ("Straw Polls") to be held at the January 29, 2008, election relating to the potential incorporation of these areas into municipalities. Each of these requests have somewhat separate fact patterns; I will discuss them separately.

1. Lehigh Acres

This is the second such request from this community under similar circumstances. In 1996, at the request of the local Legislative Delegation, a non-binding referendum was authorized by the Board of County Commissioners, and was held relating to community interest in incorporation.

Similarly, you are again being requested by the Lehigh Community for a non-binding referendum on its potential incorporation as a condition precedent requirement from the local Legislative Delegation to obtain community sentiment for the taking of a proposed Special Act for the incorporation Lehigh Acres at the 2008 Legislative Session.

The request has come from the citizens group "Citizens for Cityhood" which has prepared a feasibility study and a proposed Special Act for Legislative consideration by the Florida House and Senate at its 2008 Legislative Session.

Based upon that recent request and the timing for scheduling matters on the January 29, 2008, Presidential Primary and Special Election prior to October 1, 2007; the final transmittal date to the Supervisor of Elections for the January 29, 2008, election, a Blue Sheet has been prepared and is scheduled for your Regular Meeting of September 25, 2007 on the Administrative Agenda.

Re: Requests for Non-Binding Referendum on Incorporation from two areas of the Unincorporated County; Lehigh Acres and Estero

The Blue Sheet contains all of the necessary documentation to place the matter on the January 29, 2008, Presidential Primary and Special Election, should the Board choose to do so.

There is an issue with respect to the boundaries for the non-binding referendum and proposed municipality. For purposes of canvassing and capturing all of the eligible electors for the non-binding referendum, the Lehigh Acres Fire Control and Rescue District boundary is being used for the referendum. However, for purposes of the proposed municipality to be described in the incorporating Special Act should the non-binding referendum be positive, staff is recommending to the Board that the local incorporation committee be advised to use the Lehigh Acres Community Plan boundary for the proposed municipal boundary as a condition of the Boards' approval for placing the non-binding referendum on the ballot.

The community group "Citizens for Cityhood" is represented by Cari Roth, Esquire, of the Bryant, Miller, and Olive Law Firm, Tallahassee.

2. Estero

Like Lehigh Acres, a citizen group, "Vote Estero", has also requested a non-binding referendum relating to its incorporation be placed on the January 29, 2008, Presidential Primary and Special Election.

There have not been any requests from the Legislative Delegation with respect to a non-binding referendum to poll elector sentiment for an incorporation of Estero.

Again, like Lehigh Acres and from the timing perspective for the placement of a non-binding referendum on the January 29, 2008, election; this issue has been placed on the Administrative Agenda at your September 25, 2007, Regular Meeting for your consideration.

Estero has the similar boundary matter as Lehigh Acres. For the purpose of election coverage, the Estero Fire Rescue District boundary will be used for the non-binding referendum. If, at some point in the future there may be a Special Act for the incorporation of Estero, staff strongly recommends that like Lehigh Acres, Estero use its Community Plan boundary as the proposed municipal boundary.

The community group "Vote Estero", is represented by Michael J. Ciccarone, Esquire of the Goldstein, Buckley, Cechman, Rice and Purtz Law Firm in Fort Myers.

Re: Requests for Non-Binding Referendum on Incorporation from two areas of the
Unincorporated County; Lehigh Acres and Estero

The calling of a Special Election in the county such as the two proposed non-binding referendums is discretionary with the BOCC. You have the authority to either call Special Elections or not, as facts and circumstances dictate.

Both Resolutions for the proposed, requested non-binding referendums are scheduled for your consideration at the September 25, 2007, Regular Meeting on the Administrative Agenda. A Public Hearing is not required for this threshold decision. All advertising that is legally required for the referendums applies only if the Board directs either or both of the referendums to the election in January, 2008.

If you have any questions about the presentations of the two requests prior to your September 25th meeting, we can brief you individually at your request.

DMO/awe

xc: Andrea R. Fraser, Deputy County Attorney
Donald D. Stilwell, County Manager
Holly Schwartz, Assistant County Manager
Mary Gibbs, Director, Lee County Department of Community Development
Paul O'Connor, Planning Director, Lee County Department of Community Development