

NEWSPAPER ARTICLES / QUOTES

Ralf Brookes Attorney

Sierra Club blows whistle on land clearing activities

By Jack Gurney

Pelican Press – Sarasota Florida

May 4, 2006

- * The environmental group tells state officials Sarasota County fails to protect wildlife.
- * It alleges the county doesn't utilize protected species maps provided by state authorities.
- * Land development regulation changes are recommended to force local cooperation.

Florida authorities have been warned by a local Sierra Club chapter that Sarasota County fails to properly utilize state wildlife maps when it allows developers to bulldoze land. It is not the first time such a charge has been leveled about the county's land-clearing rules.

On April 26, a letter describing the county's alleged practices was sent to the Florida Department of Community Affairs. The agency reviews comprehensive plans for communities all over the state, and could force the county to change its regulations.

What the environmental organization charges is that county officials have repeatedly been provided with Database Maps of Species Occurrence by the Florida Fish and Wildlife Conservation Commission that show where protected wildlife are likely to be.

"Sarasota County is failing to adequately implement coordination with the Florida Fish and Wildlife Conservation Commission staff," Sierra Club attorney Ralf Brookes wrote to Mike McDaniel, the state's growth management administrator.

The letter describes "numerous occasions" in which state wildlife officials have furnished database maps to the county so permits for land clearing are not prematurely issued. "Sarasota County staff keeps losing the database," Brookes reported.

To remedy the situation, Sierra Club members have asked the state agency to intervene and ensure that county land development regulations are adopted which require cooperation with wildlife authorities when protected species may be in harm's way.

"The Sierra Club came to me with examples of projects where gopher tortoises have been crushed," Brookes said. "We've drafted proposed regulations based on those adopted by Collier County and Hillsborough County which require a natural resource permit."

What the permit would force county officials to do is coordinate with state wildlife authorities on sites that are identified on database maps as possibly locations of protected species, and allow state

experts to inspect before bulldozers scrape them clean.

The subject of how area parcels are bulldozed by developers has previously been described to the county commission by concerned residents and addressed by county resource protection officials who are charged with averting wildlife destruction.

“We’ve been trying to beef up the land development regulations as part of the comprehensive plan update process,” Commissioner Jon Thaxton said. “It’s a complicated subject, but there are basically two issues that need to be addressed.”

They are: 1) coordinating with federal and state agencies on the issuance of earth moving permits when protected species may be involved; and 2) identifying native habitat on parcels before they are pre-cleared by developers.

“Our updated comprehensive plan now has the language that is needed,” Thaxton said, “but the county doesn’t have land development regulations to implement those policies. We need specifics codified in the regulations that shut existing loopholes.”

Federal and state wildlife authorities provide the county with lists of endangered species, threatened species and species of special concern, such as the Florida scrub jay, American bald eagle, Sherman’s fox squirrel, burrowing owl, gopher tortoise and indigo snake. But the county’s current land development regulations allow developers to buy earth moving permits before they coordinate with federal and state wildlife authorities, so long as they agree to demonstrate an after-the-fact effort to protect identified species.

As matters currently stand, county resource protection officials visit parcels and attempt to identify signs of protected species before they sign off on land clearing permits, but their efforts fall short of the wildlife surveys conducted by professionally trained biologists.

River advocates call for Lake O reforms

By Kate Spinner, Naples Daily News/Bonita Banner

Thursday, April 20, 2006

Overlooking the Caloosahatchee River from Centennial Park in Fort Myers, environmental advocates lamented the river’s declining health with a faint glimmer of hope for the future.

Drawing widespread attention to the river’s plight, national environmental group American Rivers ranked the Caloosahatchee as seventh on its annual endangered rivers list, which came out Wednesday.

“I’m ticked off,” said Ralph Brooks, an environmental attorney who has seen the river and the local economy become “devastated” over the past decade. “We need to stop the mismanagement of Lake Okeechobee and the Everglades system. I want to see my toes on Sanibel again. I want to see pelicans diving with terns in the river for fish. I want to see flats boats right behind me like I once did fishing for tarpon. All I see now is emptiness.”

Speaking before a crowd of local media at the park, environmentalists said they hope the attention from American Rivers fosters the adoption of better water quality policies and brings more funding for projects that would bounce the river back to health.

Jennifer Hecker, natural resources policy manager for The Conservancy of Southwest Florida, said the river needs immediate help.

“The Caloosahatchee River and estuary is the lifeblood of our regional economy, our environment and our quality of life. To have it sacrificed as a disposal conduit for the polluted waters held in Lake Okeechobee is unacceptable to the communities of Southwest Florida,” Hecker said. “What we need is fundamental reform in how Lake Okeechobee is managed, so that it is managed more as a lake rather than as a reservoir.”

More than a century of environmental manipulation in South Florida has damaged the lake and the river. An earthen dam surrounds the lake to keep its waters from spilling south as they did historically. Now farm fields and communities sit in about half of the lake’s original floodplain, which was once part of the Everglades.

Water managers — the U.S. Army Corps of Engineers and the South Florida Water Management District — send that water to sea, through the Caloosahatchee River on the west coast and the St. Lucie canal on the east. Through the \$10.8 billion Everglades restoration plan, efforts are under way to reroute some of the water south and store the rest in the lake and in above ground reservoirs and underground aquifers.

But Wednesday, Lee County Commissioner Ray Judah, Brooks and leaders of the Conservancy of Southwest Florida, Audubon of Florida, Audubon of Southwest Florida, the Sanibel-Captiva Conservation Foundation and Caloosahatchee Riverwatch said the restoration projects are not big enough.

Paul Gray, a Lake Okeechobee expert with Audubon of Florida, said enough water drained into the lake from its northern watershed to raise it six feet last year and the year before. But, he said, restoration plans north of the lake would provide just eight inches of water storage.

Without adequate storage in the system, the water that enters the lake is flushed to sea as waste. Last year 696 billion gallons of dirty lake water pummeled the Caloosahatchee estuary. The releases carry polluted sediments that cause blue-green algae blooms in the river and cloud out sea grasses in the estuary. Sea grass beds provide nursery grounds for small and juvenile fish and food for manatees.

“If you can only catch eight inches, we are going to have a very, very large problem even after the Lake Okeechobee part of the restoration is done,” Gray said.

He and Andrew McElwaine, president of the Conservancy, said more reservoirs and water treatment marshes need to be built south of the lake too.

Hecker said the river’s problems are not just Lake Okeechobee’s. She said about half the dirty water that courses through the river is from its own watershed.

She and Mary Rawl, president of Riverwatch, said communities along the river need to retrofit old wastewater systems and immediately set better water quality standards for new development.

In addition, Hecker and Erick Lindblad, president of the Conservation Foundation, said that while the river is damaged from excessive discharges in the rainy season, it is also damaged in the dry season by lack of water.

Hecker said the river needs more assurance that it will receive water when it is needed.

Last week, Steve Sentef, lead regulatory representative with the water management district's west coast office, said the district is spending millions to retrofit the stormwater systems of old communities along the Caloosahatchee and to build more treatment marshes as new municipal parks and athletic fields are built. The district also spent about \$450,000 to restore one of the river's original bends in Hendry County and it will spend nearly the same amount to revive another bend.

The Army Corps is also changing the way it sends water to the river.

With the changes in the works, Hecker said there is really no better time than now to call attention to the river's problems through the American Rivers endangered list. "This designation is a call to action and the time for action is now," Hecker said.

Gray said nursing the river back to health will take time. After all, he said, it took 100 years to bring the river to its current state. "It's already too late," Gray said after the press conference. "We're in a remedial stage. We're trying to clean up past problems. We're going to continue to have really bad conditions until we get most of the stuff (with Everglades restoration) in the ground."

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Second challenge filed against Grande Beach

By [Jim Reeder](#)

Palm Beach Post Staff Writer

Saturday, June 03, 2006

FORT PIERCE — A second legal challenge has been filed over St. Lucie County's approval of Grande Beach, a proposed mixture of residential and commercial uses on North Hutchinson Island.

The North Beach Association property owners' group and resident Michael Riordan said in an action filed Wednesday, the commission violated its own land development code when it approved the project on a 4-1 vote May 3.

"They increased the density in a high-hazard coastal area," attorney Ralf Brookes, the association's and Riordan's lawyer, said. "That's the last place you want higher densities."

The project was hotly debated the night of May 2 and early May 3 before commissioners approved it, with Commission Chairman Doug Coward opposed.

Some residents said they don't want three-story buildings looming over their single-story houses and yards. Others said the island needs more commercial development than the project provides. A shopping center on the 9-acre site has been largely abandoned.

Grande Beach was approved for 80 residential units and 10,000 square feet of commercial space near Marina Drive and State Road A1A. Only 34 units should have been allowed under the land development code, according to the lawsuit.

St. Lucie County Attorney Dan McIntyre was on vacation and unavailable for comment Friday.

Brookes hopes a panel of three circuit judges will review the commission action in rezoning the land from general commercial to planned mixed-use development.

A separate action filed in Tallahassee challenges the commission's approval of a change to the future land-use plan map that was required for Grande Beach. That action, filed on behalf of Robert and Ellen Emery, wants a state administrative law judge to review the land use change. The governor and Cabinet sitting as the Administration Commission could make the final decision on whether the land use change should stand.

Sanibel toll-hike suit

By Jeff Cull

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<http://www.news-press.com/apps/pbcs.dll/article?AID=/20060128/NEWS0117/601280503/1075>

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Lee County could find itself back in court defending its \$6 Sanibel bridge toll after a state appeals court overturned the dismissal of a lawsuit brought by a Sanibel woman.

Marie Gargano, a nine-year Sanibel resident, sued Lee County in the 20th Circuit Court in August 2004. She asked that construction of the three new Sanibel Causeway spans be halted, argued that the new toll — raised in November 2004 from \$3 to \$6 to pay for the new bridge — was unreasonable and claimed that the causeway disrepair resulted in higher garbage-collection fees due to weight limits placed on the spans.

Lee County decided to replace the spans at a cost of more than \$120 million after serious maintenance defects were uncovered in 2003 and raised the bridge toll in 2004.

Judge Thomas Corbin dismissed the suit, saying that Gargano didn't have standing to file the suit and that he didn't have the authority to rule on toll decisions made by the Lee County commission.

Gargano appealed and the 2nd District Court of Appeals in Lakeland agreed with her.

In a ruling that took more than six months to prepare, Judge Chris Altenbernd sent the case back to Corbin saying Gargano could bring the suit and that the circuit court should rule on the legality of the toll.

"Sanibel residents won a clear victory in the ruling from the appellate court," Gargano said. "The court ruled the tolls must be reasonable; at the present level we believe they are not."

Altenbernd ruled against Gargano's claim that the toll is an unfair tax — he called it a user fee. He ruled that bridge construction could not be stopped — the bridges are under construction — and that she could not recover garbage fees or receive refunds for tolls paid.

That prompted Lee County to also claim victory.

"We would have preferred to have it disposed of all at once but we don't mind defending the reasonableness of the toll," said John Renner, chief assistant county attorney.

Gargano's attorney, Ralf Brookes, was pleased.

"We're very happy with the decision," he said.

But Sanibel resident Cliff Fitzgerald was disappointed that Altenbernd ruled that citizens couldn't challenge Lee County's decision on maintaining or replacing county bridges.

"The acts and omissions of the county commission were upheld," he said.

Gargano and the grass-roots group called Save Our Bay Inc. filed the original lawsuit. About the same time, The News-Press published a report that said the county had siphoned off nearly \$50 million in toll profits over a 15-year period to pay for other county road projects and had neglected maintenance that led to failures.

Altenbernd addressed the fact that Lee County used toll profits for other county roads.

He said it would be considered reasonable to use surplus tolls to improve roads related to the bridge but not other county roads. However, county attorneys contend that Florida law says that money can be used for any county road project.

They will ask commissioners Tuesday for permission to ask the appeals judge to clarify that point, Renner said.

That didn't surprise Sarasota land-use attorney Robert Lincoln.

"Commissioners use road tolls to pay for other projects so they don't have to raise taxes," he said. "It's happening all over the state."

Lincoln added that the circuit court judge shouldn't have a difficult time ruling on the case. There's a lot of case law dealing with what makes user fees reasonable, he said.

"Florida law says that for a user fee to be proper it has to be used to defray the costs of the services supplied," he said.

That's what Gargano contends.

"Lee County can no longer justify running roughshod over islanders by taking our toll money and spending it all over the county," she said.

Also from the Ft Myers NEWS-PRESS.COM – click below:

[Price of \[Sanibel Bridge\] neglect adds up” \(published Oct. 10, 2004\)](#)

Group sues to block demolition of historic Great Southern Hotel

By Shannon O'Boye

Staff Writer

November 16, 2005

Hollywood, Florida

A group of crusaders trying to save the historic Great Southern Hotel has asked a judge to overturn the City Commission's decision to allow it to be demolished.

The Friends of the Great Southern say a majority of city commissioners ignored the city's protections for historic buildings last month when they voted 4-3 in favor of granting developer Charles "Chip" Abele a partial demolition permit.

Abele wants to build a \$100 million, 19-story mix of condos, shops and offices overlooking Young Circle. He won support from the city's historical society by agreeing to save some of the 81-year-old building's unique exterior walls.

The Friends of the Great Southern also charge that the city's code regarding demolition of historic buildings is overly broad and grants elected officials unbridled discretion to do, essentially, whatever they want, according to the group's lawyer, Ralf Brookes.

The code lists eight criteria commissioners must consider before granting a demolition permit, but it does not say how many of the criteria must be met in order to approve or reject a demolition request. "It's a poorly drafted provision, and it's unconstitutionally vague," Brookes said.

City Attorney Dan Abbott, who received a copy of the paperwork on Tuesday, said: "I feel confident that the decision of the commission was supported under the code and that we'll withstand this challenge."

Two city commissioners said they thought Abele had not met the criteria for demolishing the hotel, which was built by city founder Joseph Young and is the main reason the city's downtown business district is listed on the National Register of Historic Places. The hotel is one of the few remaining structures built by Young. It deteriorated into a flophouse before the city closed it in 1991 because of code and safety violations.

"I think the city is in conflict with itself and its own historic guidelines," said Commissioner Beam Furr, who has been against the project from the start. "The guidelines talk about building something that is compatible with the district. I don't find this design [of Abele's] to be compatible with the historic district."

Commissioner Peter Bober, whose comments from the Oct. 11 demolition meeting were quoted extensively in the Friends of the Great Southern's legal filing, voted for Abele's project in July 2004 and several times subsequently. But he said he could not vote for the demolition because he did not think the criteria had been met.

That did not constitute a flip-flop, Bober said. "Some commission members felt we made a commitment, so we are required to rubber stamp subsequent legal findings," Bober said. "I'm trained as a lawyer. ...I look at it like a judge would look at it. I believe it's important to follow the legal standards we've created."

A Broward circuit judge will review the case. The city has about 30 days to file a response, Abbott said.

Shannon O'Boye can be reached at soboyle@sun-sentinel.com or 954-385-7912.

<http://www.sun-sentinel.com/news/local/broward/sfl-shotel16nov16,0,5110988.story?coll=sfla-news-broward>

Another Article on the Great Southern Hotel case appears in the National Trust for Historic Preservation magazine at:

http://www.nationaltrust.org/Magazine/archives/arc_news_2005/112305.htm

Permit for beach house denied

Owner sought variance for lot in North Captiva

By ANGELA HILL

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Published by news-press.com on September 14, 2005

A two-year battle that pitted a landowner against his neighbors over the right to build a house on the beach in North Captiva is going the way of the neighbors — for now.

A judge denied the request for a state permit by North Captiva landowner Eric Flanagan. He was asking the state to change where homes can be built on the barrier island.

All that stands between Flanagan getting to build his home or neighbors resting easy is a final order to be issued by the Florida Department of Environmental Protection in the coming month. Judge Charles Stampelos's denied the recommendation of Flanagan's permit because the home would:

- Negatively change the shoreline
- Disturb the vegetation
- Significantly interfere with the shore's ability to recover from a coastal storm.

Flanagan, a New York City resident, wants to build a house on a 75-foot wide, 233-foot-long Gulf-front lot that he bought in 1994 by paying \$33,000 in back taxes. It is one of 15 Captiva properties in his name.

Flanagan wanted to build the home closer to the Gulf, past the Coastal Construction Line that was created in the 1970s. That rule was to prevent beach erosion and costly storm damage to coastal homes and businesses by not allowing homes to be built too close to the water.

Occasionally, property owners may build seaward of that line if they get local variances and state permits.

Neighbors living adjacent to the property argued the home would cause harm to the sand dunes. Dunes protect shorelines against erosion and soften the blow of tropical storms.

Flanagan submitted a request to Lee County in October 2003 requesting two variances, the first to allow a setback of zero feet from a private road. Normally 20 feet is required. The second request asked to allow the construction of a single-family home built on stilts 8 feet over the CCL where development, other than minor structures, is prohibited.

County staff recommended against Flanagan's request, saying the house would affect the dune because it would prevent sunlight from reaching the plants that hold the dune together.

In his request, Flanagan stated that no more than 8 feet of the raised portion of the house would be over the dune and the home would have no street setback, meaning the home was going to be built right up to the street.

Lee County Hearing Examiner Salvatore Territo gave Flanagan permission in July 2003 to build his home.

Neighbors Steven Huff, Mitra Bakhtian and Dion Deloof countered the hearing examiner's decision with a lawsuit. The residents who live across the street from Flanagan's lot filed papers in August 2003 with the Lee County circuit court asking a judge to review the hearing examiner's decision.

Attorney Matt Uhle, who is representing Flanagan, said he and his client disagree with the judge's decision and will be filing exceptions before the Friday deadline is reached.

The neighbors, represented by [Attorney Ed Steinmeyer], environmental attorney Ralf Brookes and land use attorney Charles Basinait, have an opportunity to submit their own exceptions against Flanagan's.

Smaller Estero development recommended

By DENISE L. SCOTT

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Published by news-press.com on September 12, 2005

Lee County's hearing examiner on Monday recommended approval of a controversial development next to state preservation lands in Estero — with a 29 percent reduction in the number of homes.

The developer of Hideaway Cove had proposed 90 homes clustered on 32 of 60 acres at the end of Pine Road, adjacent to the Estero Bay Buffer Preserve.

Hearing Examiner Diana Parker recommended Monday that county commissioners approve only 64 homes, citing environmental and safety concerns raised by Pine Road residents who opposed the project.

The property, formerly known as Estero 60, has two owners. The 131 Group's Thomas Gilhooley and his wife, Michele Pessin, own 28 environmentally sensitive acres, which they're offering to donate for preservation.

They sold the remaining 32 acres to Michael Hoggatt of Estero Preserve LLC, who wants to build the residential development.

Lee County officials once joined residents in the fight to keep the entire tract as part of the state-owned preserve.

When that purchase fell through, county officials decided to support an amendment in 2003 for as many as 120 units.

Gilhooley wants to transfer the 30 unused units from the Pine Road property to land he owns at the former Weeks Fish Camp in Estero.

Lee County commissioners will make the final decision at a rezoning hearing yet to be scheduled.

<http://www.news-press.com/apps/pbcs.dll/article?AID=/20050912/NEWS01/50912005/1001/ARCHIVES>

Corps nixes handing off permit duties - Wetlands actions a federal, not state, function.

By AARON DESLATTE
NEWS-PRESS TALLAHASSEE BUREAU
Published by news-press.com on May 24, 2005

TALLAHASSEE — The U.S. Army Corps of Engineers has told Florida it can't go along with state lawmakers' aim of gaining more say over wetlands destruction spurred by development.

The Corps takes action on thousands of applications a year from developers trying to fill in wetlands for their subdivisions and shopping malls.

But builders, complaining the Corps takes too long to approve projects, pushed a bill through the Legislature this month that seeks to hand off federal permitting of projects that affect up to 10 acres of wetlands.

Wetlands are swampy areas that help filter contaminants from water as it seeps into the ground.

The bill, sponsored by Republican Rep. Trudi Williams, a Fort Myers environmental engineer who works for South Florida developers, directs the state Department of Environmental Protection to try to take over the federal permitting for thousands of projects that could fit that 10-acre definition. Col. Robert Carpenter, who oversees Corps operations in Florida, said the state and the federal government are at loggerheads over the issue. Any delegation of permitting from the Corps to the state would take an act of Congress, not state lawmakers, he said.

"It's a great idea, but neither of us could find a lot of savings in time in this idea," said Carpenter, discussing a meeting he had with Environmental Secretary Colleen Castille after the bill passed on May 6.

"I don't think there are any avenues between the Corps and the state that have not been previously explored," Carpenter said.

State environmental officials have tried and failed for a decade to get the Corps to cede some permitting to Florida and regional water management districts to speed up the process.

The Corps has just over 100 employees who each review up to 200 permits at a time, Carpenter said.

Developers who backed the bill hope removing federal obstacles to their projects will speed approval. Should DEP take over the federal permitting, applications to destroy wetlands could only have to wait the state-mandated 90 days for approval; federal requirements can take a year or longer to navigate.

If DEP takes no action on an application, it is approved automatically.

Because the state wouldn't be obligated to follow federal rules for protecting endangered species and waters, the Corps has been reluctant to give up its authority, according to agency officials and environmental watchers.

"We've tried this before; we have not been successful," said Richard Cantrell, DEP deputy director of water resources management.

For instance, the state and federal governments disagree over what to consider a wetland area in Florida, with the Corps classifying more acreage as wetlands than the DEP.

The problem is typified by state and federal disagreement over Florida's slash pine tree. The federal government treats the tree as an indicator of wetlands, the state does not. The Corps also frequently turns to the U.S. Environmental Protection Agency and Fish and Wildlife Service to ensure development requests adhere to the federal Clean Water and Endangered Species acts, a review environmental groups consider superior to the state's.

"There are a lot of projects out there with 10 acres or less of wetlands that have a large impact on wildlife," said Thomas Reese, a longtime environmental lawyer from St. Petersburg who has worked for the Florida Wildlife Federation.

If signed into law, the bill would take the federal protections off the table, and eliminate a powerful deterrent against proposing development in areas where endangered panthers or other species might roam, said Ralf Brookes, a Cape Coral land-use lawyer who has worked for the Sierra Club.

The bill directs DEP to submit a plan to legislative leaders by Oct. 1 for what duties the Corps is willing to delegate to the state.

The bill also orders DEP to enlist the help of Florida's congressional delegation to push for any congressional changes needed to do so. Gov. Jeb Bush said last week he had concerns about a provision in it that puts off until 2010 some state wetlands and storm water runoff permitting in the Panhandle.

"This is an incredibly beautiful part of the state, and I want to make sure as it grows that we don't damage the natural surroundings," Bush said Friday. James Garner, a lobbyist for WCI Communities in Bonita Springs and Naples-based Landon Development Corp of Florida, said delegating some review to the state would free up federal staff to handle bigger projects more quickly.

"All it does is free up the Corps to work on larger projects, because they are way behind and have a shortage of manpower and money," Garner said.

But even Rep. Williams, the bill sponsor, conceded her legislation would push projects through more quickly, possibly without as much environmental review. "Theoretically yes, it could make it quicker, but that wasn't my intent," said Williams, whose Fort Myers engineering firm does work for WCI and other developers.

Williams said she offered the bill based on her conversations with Col. Carpenter, who says permit applications spend more time in piles on his employees' desks than being processed. "He has 103 employees and 11,000-plus permits. He truly can't keep up," Williams said. "If he's not comfortable with 10 acres, what is he comfortable with? We've got to start that dialogue."

May 24, 2005

"Hi Ralf,

Thanks for your help with this Wal-Mart issue. As the article below says, you can add another tally to your victories. Thanks for your help and keep up the great work nation wide. Thanks again. Amy Tidd, Conservation Chair, Turtle Coast Group, Sierra Club. News Article attached."

Moms take on Wal-Mart -- and win ! **Mega-retailer ends bid to buy site near school**

BY BRITT KENNERLY

FLORIDA TODAY

TITUSVILLE - For more than a year, two stay-at-home moms have led local voices against a proposed Wal-Mart Supercenter at Garden Street and Interstate 95.

Monday, Lisa Smith and Arlynn Baker voiced nothing but happiness as news began to spread that the retail superpower withdrew an offer to buy land at the location for the city's second Supercenter. Baker's and Smith's concerns ranged from the safety of children at South Lake Elementary School -- across from the 93-acre site -- to potential traffic tie-ups and water quality.

But while they're elated that the project has come to a halt, the women say they'll stay alert for developments.

They support Rep. Bob Allen's idea to merge city and state money to buy the site's crucial watershed area and allow less intrusive building on the rest of it.

"It was worth it, but we're only halfway there until the land is protected, and we don't have to be concerned about losing our water supply," said Baker, who home-schools her daughter.

"We got discouraged at times, but it was worth the fight. We don't want our children to not have water to drink down the road, or have dead children on the road."

Wal-Mart spokesman Eric Brewer confirmed that while the company will no longer pursue the Garden Street site, the retailer is "still very interested in Northern Brevard."

"The most important thing for us is to make sure our store represents the community," he said.

"After a number of association and community meetings, and working with the city, we knew it just really wasn't the best site for us."

While no site and timetable are under consideration, the company's real estate team is looking at a number of locations north of Garden Street, Brewer said.

"Mims is certainly an area to look at," he said.

Growth education

Smith, a former president of the Tanglewood Homeowners Association, lives near the now-rejected store site.

The mother of two said she got a real education from attending council and community meetings, talking to government and Wal-Mart officials and literally taking her concerns to the street.

"I learned what a comprehensive plan is, how state and city officials work together to get things done," she said. "The property owner has rights, but so do we. And the City Council has to look at the big picture.

"My philosophy is, don't just take a back seat. You sometimes have to take action."

Also elated was Amy Tidd of the local Sierra Club, which came out against Wal-Mart's plan from its inception.

"It's a huge victory," she said.

Community vents

While many communities nationwide have taken action to stop Wal-Mart from building in their cities, the type of resistance voiced in Titusville was atypical, Brewer said. More than 500 residents, many venting anger, attended a community meeting about the plan earlier this year.

Since the first Supercenter opened in 1988, none has closed in the United States, Brewer said. Those that "went dark" were moved to another location in the same trade area.

The owner of the property, Maury Carter and Associates of Orlando, could not be reached for comment.

Contact Kennerly at 360-1016 or bkennerly@flatoday.net

Court rules Hernando can't review WalMart plans without public

By DAN DeWITT, Times Staff Writer

Published January 21, 2004

An appellate court, agreeing with an earlier ruling from a circuit judge, has ruled that Hernando County cannot exclude the public from meetings to review development plans.

The suit rose out of the battle between the environmental group, Coalition for Anti-Urban Sprawl and the Environment (CAUSE), and the county over the Wal-Mart SuperCenter on U.S. 19 that was completed last year.

The suit, filed in 2002, claimed that meetings of the development review committee violated the state's open government law and should render Wal-Mart's permit invalid.

The 5th District Court of Appeal ruled the same way that Senior Judge John W. Booth did in November of 2002. It found the meetings did violate the Sunshine Law. But neither the judge nor the court moved to invalidate the permit.

The appeal court heard the arguments in December and issued its ruling, which also required the county to pay the legal fees of lawyer Ralf Brookes, on Jan. 6. CAUSE founder Arline Erdrich said she heard about the decision last week.

"This is a major victory," she said on Tuesday.

But Kurt Hitzemann, the assistant county attorney who handled the case, said the ruling probably would not change much.

Development review committee meetings allowed an array of staffers to consider the project at the same time. They streamlined the review process, the county has argued, by letting developers address all of the concerns at once.

Jul 30, 2003

Bear killed near new Wal-Mart

By MICHAEL D. BATES
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SPRING HILL - Jean Bruinsma of Hernando Beach was driving back from the bank about 9 a.m. Wednesday when she noticed something big and furry laying on the side of the road just west of Hernando Christian School on Osowaw Boulevard.

She pulled over and saw a large black bear, lying about halfway between the road and the woods. It was a sight she won't soon forget.

"I've never seen a black bear in the wild and I didn't want to see a dead one," said Bruinsma. "It's devastating."

During the next hour, scores of passing motorists stopped by and crowds collected to view the carcass. Most expressed dismay and bemoaned the death of yet another bear near the Osowaw Boulevard area that skirts the Weekiwachee Preserve, a protected wildlife area.

The bears use Osowaw to cross to and from the preserve. With continued development in that area, the number of motorists has increased, making it increasingly dangerous for the bruins and other animals.

In the past two years, at least five other bears have died in a 10-mile radius of the site.

This latest victim was a male, approximately 12-15 years old and between 200-250 pounds, according to Mary Barnwell, senior land management specialist with the Southwest Florida Water Management District (Swiftmud).

The bear was part of a combined study by Swiftmud and other agencies that track the animals and had the number 107 tattooed inside its mouth for identification purposes. The electronic collar attached to the bear's neck fell off about five years ago, but remote pictures picked up its trail since then.

At 15, the bear was nearing the end of its life, said Barnwell. It could have been looking for a female to breed, she said.

The first call reporting the dead bear came in to the Gulf Coast Conservancy's Bear Hotline at 7:30

a.m. Wednesday, according to Libby Blizzard, GCC membership and secretary chairwoman who operates the hotline.

Blizzard said that judging from the condition of the body, the bear was likely hit eight hours earlier, shortly before midnight.

No skid marks were seen on the pavement but there were tire tracks on the east shoulder of Osowaw, suggesting that a motorist swerved off the road and onto the grass.

Initial examination of the body showed the bear was bleeding internally and had broken bones.

"There's no question it was hit," Barnwell said.

Barnwell said the bear will be taken to the U.S. Fish & Wildlife Service in Gainesville to be studied.

The remains will either be disposed of there or returned to the Osowaw site to be eaten by predators, preserving the natural cycle.

Environmentalists and others have blamed the destruction of animal habitat near the intersection of U.S. 19 and Spring Hill Drive for the increase in bear deaths.

The 6,000-acre Weeki Wachee Preserve is home to 20 bears, many of which routinely wander in the woods on the southwest corner of Spring Hill Drive and U.S. 19, site of a recently-opened Wal-Mart Supercenter.

The growth has caused more encounters between animal and man, they said.

In September of 2001, two bear cubs were hit and killed by a vehicle when they were crossing Osowaw Boulevard. The cubs' mother, who had accompanied the two, made it safely across the road and was heard bawling loudly over her lost cubs as she hid nearby.

Some environmentalists have blamed county commissioners for allowing commercial growth near the preserve. Wednesday's death occurred about a half-mile west of the Wal-Mart.

Barnwell said with growth in the area, it is imperative for motorists to maintain caution when driving along Osowaw Boulevard and nearby Shoal Line Boulevard in Hernando Beach, well-known bear corridors.

"For their own safety, they should observe the speed limit and even go a little slower," she said.

This story can be found at: <http://www.hernandotoday.com/MGABQSHXRID.html>

County sued over bears ...

An environmental group claims rezoning 42 acres would hem in bears, harm Aripeka's Old Florida ways and violate land use plans.

By WILL VAN SANT, Times Staff Writer

© St. Petersburg Times

published June 18, 2003

BROOKSVILLE - A local environmental group has sued Hernando County alleging officials violated growth management rules May 14 when they rezoned a 42-acre parcel at the junction of U.S. 19 and Osowaw Boulevard.

The Coalition for Anti-Urban Sprawl and the Environment filed its lawsuit in the 5th Circuit Court late Monday afternoon charging that the rezoning, from agricultural to commercial, threatens a Florida black bear population, disturbs the Old Florida charm of nearby Aripeka and was done without required regulatory oversight.

Hernando Beach resident Linda Prescott, a group member, said the lawsuit was filed largely to send a message to local leaders that rigorous growth management practices are needed to ensure the county retains virtues its neighbors have lost.

"Today I had to go to a doctor in New Port Richey," Prescott said. "And I said, "Oh my God, this is

what we are doing to ourselves in Hernando County."

Central to the lawsuit is the charge that the rezoning, which has set the stage for commercial development of the site, is invalid because it lies in an area designated on the county's future land use map for public facilities use.

The future land use map is the heart of the county's comprehensive plan, a blueprint for how to handle growth. Generally, areas designated for public facilities use are set aside to serve utilities networks or as sites for public libraries.

To justify the rezoning to commercial, the lawsuit contends, officials first should have amended the land use map, a lengthy process that involves review by the state Department of Community Affairs, Florida's chief planning agency.

County Growth and Development Director Larry Jennings said he would not comment on the lawsuit but acknowledged that the county had taken the position in many cases that commercial development could proceed in land designated for public facilities use.

According to Charles Gauthier, the DCA's chief of comprehensive planning, local governments have broad discretion over what kinds of growth they permit in their various land use categories. However, Gauthier said he was unsure of how to reconcile private development interests on land slated to serve government in its efforts to aid citizens.

"It would not be typical to see retail commercial uses under a category labeled as public facilities land use," he said. Gauthier said he was not familiar with any case law that addressed the issue.

But Ralf Brookes, attorney for the environmental group, said that although the courts had not dealt with the specific question of commercial development on public facilities land, various judges have ruled that every rezoning must be consistent with a county's comprehensive plan.

And in this case, the attorney said, it was not.

"We are on solid ground," Brookes said. "It's a clear violation."

The lawsuit also seeks to have the rezoning invalidated on the ground that it conflicts with the conservation section of the county's comprehensive plan, which states that wildlife habitat is to be protected and the fragmentation of wildlife corridors avoided.

In an e-mail dated Feb. 25, 2003, a copy of which was included in the lawsuit, Southwest Florida Water Management District land management specialist Mary Barnwell wrote Jennings, telling him that development of the site would encroach on bear habitat. Barnwell's e-mail states that the site lies within the home range of at least one adult male and is also the likely stomping ground of a female with two cubs.

In a novel legal twist, the lawsuit also alleges development of the site is detrimental to community character, especially when it comes to Aripeka, described as "a haven for artists, fishermen and old Florida history."

The environmental group has one legal victory against the county already under its belt. In November, a 5th Circuit judge agreed with the group that meetings of the county's development review committee were illegal because they violated state open government laws.

The meetings dealt with a Wal-Mart Supercenter adjacent to the land that's the focus of the group's most recent lawsuit. Although the meetings were ruled illegal, the judge allowed the retail giant's building permit to stand and construction was allowed to proceed.

County sued over plans for bridge

By CARIE L. CALL, ccall@news-press.com

Published by news-press.com on January 13, 2004

Two lawsuits were filed against Lee County on Monday in protest of the county's plan to build a new, \$19.4 million fixed-span bridge to replace the drawbridge on the aging Sanibel Causeway. The city of Sanibel and Save Our Bay Inc., a nonprofit group of about 100 Sanibel residents, filed the suits to compel the county to refurbish the A span drawbridge instead of building a new one.

"It's an important issue," said County Attorney Jim Yaeger. "We're in the process of looking at them."

A suit on behalf of Save Our Bay was the first to be filed just before 4 p.m., with its members wanting the county to repair the bridge and not replace it.

The group's attorney, Ralf Brookes of Cape Coral, said the county has collected toll revenues of about \$6 million per year from Sanibel and keeps a profit of \$4.5 million. Instead of using the money to repair and maintain the Sanibel bridge, the county has diverted these profits to other county road projects, he said.

"We want them to use the profits to make an immediate repair, declare the money made from the tolls an unreasonable profit and an illegally imposed tax, and we want a reduction in future tolls," Brookes said.

The second lawsuit was filed minutes after the first by the city of Sanibel attorney Kenneth Cuyler. Cuyler was not available Monday night for comment, but the city's lawsuit also claims the county did not adequately repair the bridge and did not give proper notice of its intentions.

"The county deprived the city of due process of law by providing the city neither notice of a public hearing ... nor the opportunity to be heard at an appropriate hearing," the lawsuit states.

Cuyler contends the county commission broke its end of a 2002 interlocal agreement signed with the city when commissioners approved plans in December to construct the fixed-span bridge to replace the drawbridge.

County Commissioner Ray Judah said commissioners will talk about the lawsuits during the county commission meeting today.

"(The lawsuits) don't come as a complete surprise," Judah said. He believes the 40-year-old bridge has been properly maintained by the county, but is just too old to keep repairing.

"Fixing it doesn't work anymore," he said.

THE FIGHT TO SAVE THE LAUDERDALE BEACH HOTEL

FORT LAUDERDALE Mon, Nov. 17, 2003

Beach plan brings strife no matter what city does City commissioners are caught in an uncomfortable position over the historic Lauderdale Beach Hotel. If they preserve it, a big developer will sue. If they don't, the preservationists will.

BY SONJI JACOBS
sajacobs@herald.com

When it comes to the old Lauderdale Beach Hotel, city leaders have have tried to please everyone. They have failed miserably.

The Broward Trust for Historic Preservation wants to protect the city's only major Art Deco structure, at 101 S. Atlantic Blvd.

A developer has plans -- and the City Commission's approval -- to tear down part of it and build a 29-story condominium tower.

Both sides have sued the city.

The City Commission will decide whether to rescind their decision to allow the partial demolition of the hotel and construction of the condo tower. They are taking another look because the dogged preservationists have refused to back down.

"We felt there were huge mistakes in the process and that the public was excluded from something they should have been involved in," said Charles Jordan, president of the Broward Trust.

But the December hearing again puts city commissioners in the cross hairs of lawyers who say that if they change their minds, they will face a court battle. The developers filed a lawsuit earlier this month in which they claim they have spent millions marketing and developing the hotel, which sits a few blocks north of Las Olas Boulevard.

The suit also claims that contracts valued at more than \$80 million have been executed on condo unit sales by prospective residents.

"We hope that the City Commission respects the final mediated settlement agreement when they look at his issue on Dec. 2," said Stuart Singer, an attorney for the developer.

BROWARD TRUST BORN

The fight over the hotel has divided the city for years, leading to the creation last year of the Broward Trust, a group of civic activists dedicated to saving the county's architectural legacy. The Lauderdale Beach Hotel remains its banner cause.

In 2001, the city Planning and Zoning Board authorized the developer and former owner, The Related Group and William S. Strine, to tear down the hotel. But the city's Historic Preservation Board voted in January 2002 to recommend designating the hotel a historic landmark, leaving the final decision up to city commissioners.

PARTLY HISTORIC

Three months later, in a last-minute effort to save the hotel, commissioners agreed to designate part of it as historic and to allow the condo to be built behind it.

The developer requested dispute resolution under Florida law. A special master issued the compromise agreement, which commissioners approved a year ago to the dismay of Trust members. Late last month, the Trust sued the city, arguing that the City Commission ignored its own historic review process and tried to evade code requirements when it approved the compromise. Trust members are also seething because, they say, the city ignored its own Historic Preservation Board's unanimous recommendation that the entire structure be designated a historic landmark.

The parties, along with a lawyer for the city, appeared before Broward Circuit Judge Jeffrey Streitfeld on Friday and agreed to hold off on more legal action until after the Dec. 2 meeting.

No matter what the commission decides, one side or the other will pursue its case in court.

The controversy over the historic hotel, built in 1936 and designed by architect Roy F. France, reflects Fort Lauderdale's ongoing identity crisis.

GROWING PAINS

The city is riding the crest of a development boom, with fashionable apartments soaring over yacht-filled waterways and ocean vistas. But the new skyline leaves many people cold, and they point to Miami Beach's South Beach and Key West as prime examples of redevelopment working with historic preservation to create economic renewal.

City Commissioner Dean Trantalis said he believes in redeveloping the beach and eliminating blight, while taking care to retain the charm and quality of life that people associate with South Florida.

"The Lauderdale Beach Hotel decision epitomizes the grossest miscalculation of how to redevelop our beach," Trantalis said. "The height will overshadow the beach. The mass will overwhelm the site, taking it out of any sense of proportion to what is around it. In combo with other projects slated for that area, it almost challenges you to not even come to the beach."

The majority of commissioners now seem to share that view, which preservationists take as a hopeful sign. The March elections ushered in two new commissioners, Trantalis and Christine Teel, who both have consistently voted against big development. "If there exists an opportunity to erase a mistake committed by a previous commission, we should make every effort to undo that mistake and do what's best to get the beach back on track," Trantalis said.

RECONSIDERING

Despite the advice of City Attorney Harry Stewart, the City Commission voted 3-2 last month to reconsider the mediated settlement agreement, with Commissioners Cindi Hutchinson and Carlton Moore dissenting. Hutchinson said she did not like the condo project, but feared expensive litigation. Moore, who typically supports bigger development projects, has been on the losing side of similar issues in recent months. He recently was the sole commissioner to vote in favor of the site plan for Palazzo Las Olas, another large development that had been slated for Fort Lauderdale's narrow barrier island.

When commissioners voted it down Nov. 5, the developers immediately promised to sue.

<http://www.sun-sentinel.com/news/local/broward/sfl-chotel03dec03,0,3879544.story?coll=sfla-news-broward>

Lauderdale stays out as developers, historic trust face off over hotel

By Brittany Wallman
Staff Writer

December 3, 2003

FORT LAUDERDALE -- Closed months ago, the beachfront Lauderdale Beach Hotel is wrapped on the ground floor with a banner showing the high-rise condo commissioners approved last year to replace part of the art deco building.

Full-page newspaper ads have touted the condo, and units have been selling for months. The owner even sold the property to another developer, The Related Group.

Just because it looks like a done deal doesn't mean it is.

A strong-willed, beach-based group, the Broward Trust for Historic Preservation, is not ready to give up the fight to scrap the condos and preserve the building.

Tuesday, members reiterated their ambitions, even as the City Commission opted to stay out of the fray and leave it to the trust alone to fight against the condo that a majority of commissioners don't want built.

"I felt they did have a right to build," said recently elected Commissioner Christine Teel, who said she would never have voted in favor of the project herself. "... I just don't see how you can undo that at this late date."

Commissioners were considering rescinding the condo's approval and holding another hearing about the project. Project opponents said they could reconsider because the minutes of the meeting accidentally were not approved and, as a result, the commission's approval was not official.

But worried about the legal shakiness of that position and the fact the developer has already sued the city, they voted 3-2 against considering the matter again, with only Commissioner Dean Trantalis and Mayor Jim Naugle voting in favor.

Trantalis cited a court ruling which held that the town of Jupiter's approval of construction of a marina slip canopy wasn't considered official until it was in writing.

But City Attorney Harry Stewart said the ruling didn't apply to the Lauderdale Beach Hotel situation, in which commission approval was granted after a mediated settlement.

"Bad facts make bad law. In this case we have bad facts," Stewart warned. "... My recommendation is let the preservation trust fight the battle."

Commissioners agreed, but held out hope the project still could be killed, as they punted the case to the trust, a relatively new, passionate activist group that is suing the city on the basis that the condo's approval violated the state Sunshine Law and the city's own development code and process.

The 28-story condo would preserve part of the historic hotel, as part of the settlement deal.

Looking for support

Tuesday, the trust hoped to gain an ally in the city. They left unhappy.

"I drove three hours to attend this meeting to be able to speak," said Ralf Brookes, the trust attorney. "But they wouldn't let the public speak. ... The city's siding with the developers."

Historic preservations saw the case as a glaring example of the city's failure to protect important treasures.

For developers, it was a perfect example of an 11th-hour attempt to interfere with construction plans. Now, it's yet another development case tied up in court.

For the developer, Tuesday's victory ends just one part of the battle.

City officials said they'll give out permits now for the condo's construction, but only after the developer agrees in writing that he is building at his own peril, considering the trust's ongoing lawsuit.

The developer might now withdraw his suit, which sought to keep the city from reconsidering the approval, attorney John Shubin said.

And he'll also consider what to do about the trust's lawsuit.

Were Rules ignored?

The trust argues in its lawsuit that concessions that were part of the settlement deal -- like a variance from the city's shadow laws regarding height, variance from the 200-foot maximum building width and from open space requirements, and a parking reduction -- did not follow the normal approval process. They contend the deal was more like "contract zoning," ignoring the rules on the books that citizens are supposed to rely on.

If the trust prevails in court, Stewart said, the condo could still be stopped. If it's built, it could even be torn down, he said.

Naugle pointed to a Jensen Beach case last year in which a developer had to tear down apartment buildings, the Villas of Pincrest Lakes, because the courts ruled the project, which had been duly approved by the county government there, violated the county's own development laws.

The Lauderdale Beach Hotel, a mid-rise, blue-trimmed, white hotel stands on a city block between Poinsettia and Cortez streets, just blocks north of Las Olas Boulevard.

History buffs are proud of the hotel, designed by Roy France, an architect who made his art deco mark on South Beach.

The state Division of Historical Resources in a letter to Naugle called it the city's "best remaining example of art deco" and said that its preservation is "an opportunity to demonstrate the city's awareness of its history."

Most seemed to agree the hotel was historic. It was pictured on the home page of the Fort

Lauderdale Historical Society's Web site.

Yet no one had actually designated it as historic, which would help protect it from demolition, until 2001, after then-developer William Strine submitted plans to build the condo.

City efforts lag

The case was a catalyst for action. Since then, activists Steven Glassman and Diane Smart have formed the Broward Trust.

But the city's efforts still lag.

Commissioners' request for an employee dedicated to preservation was denied by former City Manager Floyd Johnson, as the budget began to crumble under his administration.

The Lauderdale Beach Hotel case also crystallized the movement against "overdevelopment."

Glassman's group and another, the Central Beach Alliance, are hoping to seize on the apparent City Commission slow-growth bent to reverse the direction the previous commission took Fort Lauderdale.

Their first success came last month: Palazzo Las Olas, a housing, retail parking complex plan a few blocks from the Lauderdale Hotel, was torpedoed by commissioners even though the previous commission supported it.

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Proposed house location stirs dispute - Landowners ask judge to review decision

By PAMELA SMITH HAYFORD, phayford@news-press.com

Published by news-press.com on December 1, 2003

Three North Captiva landowners are challenging in court a hearing examiner's decision to let a neighbor build closer to the Gulf than state law allows. " " "

This is during a time when scientists and planners are trying to figure out how to deal with rising sea levels and extensive beach erosion throughout the state.

The state created the Coastal Construction Control Line in the 1970s to prevent beach erosion and costly storm damage to coastal homes and businesses.

Occasionally, property owners may build seaward of that line if they get local variances and state permits.

New York City resident Eric Flanagan wants to build a house on a 75-foot wide, 233-foot-long North Captiva lot that he bought in 1994 by paying \$33,000 in back taxes. It is one of 15 Captiva properties in his name.

However, the construction line and 20-foot street setback leave no room for a house.

A proposal to build beyond the construction line with a 5-foot street setback failed in 1995 when another Lee County hearing examiner expressed concern about the house's impact on the dune.

This time, Flanagan proposed putting part of the building on stilts, called cantilevering. No more than 8 feet of the raised portion would be over the dune and it would have no street setback. Lee County Hearing Examiner Salvatore Territo gave Flanagan permission in July 2003, citing similar

variances on Captiva, a property owner's right to use his land and testimony that the house would not greatly affect the dune.

Dunes protect shorelines against erosion and soften the blow of tropical storms.

Also, if the county were to grant Flanagan a variance from the street setback but not the coastal construction line, Territo said, the house would be so small as to be "out of character for the area," where homes "average about 3,000 square feet."

County staff had recommended denial, saying the house would affect the dune because it would prevent sunlight from reaching the plants that hold a dune together.

"I believe the balance of the evidence has shown that this would be injurious to the public," said Lee County Senior Planner Tony Palermo during a hearing in June, "that this is an eroding part of the beach and that just because it's in the air, doesn't mean it has no impact."

Three residents who live across the street from Flanagan's lot filed papers in August with the Lee County circuit court asking a judge to review the hearing examiner's decision. They are waiting for the judge to decide whether to hear the case.

"When you remove the dune and the dune vegetation, it not only endangers the house, it endangers all the houses behind them because it removes the natural protective barrier," said Ralf Brookes, a Cape Coral environmental attorney who is one of two people representing residents Steven Huff, Dion Deloof and Mitra Bakhtian.

Charles Basinait, a land use attorney with Henderson, Franklin, Starnes & Holt P.A., is co-counsel.

"We think it's an inappropriate place to put a house," Basinait said.

Attorney Matt Uhle of Knott, Consoer, Ebelini, Hart & Swett P.A. in Fort Myers represents Flanagan.

He has brought forth experts that have said the house will not hurt the dune.

"We think the hearing examiner opinion is amply supported by the evidence in the record," Uhle said.

Lee County Assistant Attorney Tom Wright filed a response supporting the hearing examiner.

"It's not unusual for us to do that because we simply defend the final decision of county government," Wright said.

But even if a judge agrees with the property owner, the Florida Department of Environmental Protection said Flanagan still needs permits from the state. Those are pending.

Front Page Headlines – Fernandina Beach News Leader

Crane Island plan rejected

By: KEVIN TURNER, News-Leader Wednesday, October 15, 2003

The other commissioners voted exactly as they had in June, when the board approved by a 3-2 margin a change in the county's comprehensive plan that would allow the development. This time Vanzant joined commissioners Ansley Acree and Vickie Samus in opposing it. Previously he had joined commissioners Nick Deonas and Marianne Marshall in supporting it.

Prior to the vote, the commission heard from numerous speakers opposed to development of the island. A few spoke in favor of the quality of work of developer Civitas and the rights of owner Lynwood G. Willis to develop the land he bought in 1973.

"I'm going to vote my own conviction," Vanzant said before the vote. On Tuesday, he said issues regarding the Fernandina Beach Municipal Airport, directly adjacent to Crane Island, had changed his mind.

"The main thing is, I was on the borderline," Vanzant said. "Some of the things I really had a

problem with, and one of them was the airplanes and the loud noise. They don't have the largest airport, but they have some good size planes." He said airport noise would become more of a problem if the airport were to upgrade its capacity in the future.

"I think there's one critical question here," Deonas said to the crowd in attendance. "What is it that the owner of the property wants? This man's been working on this property for 30 long years."

Marshall referred to the authority of the 1993 county commission, which opposed a conservation designation imposed upon Crane Island that year by the state Department of Community Affairs.

County Attorney Michael Mullin explained that the previous commission had allowed the designation because the state had insisted that the island, defined by the county's comprehensive plan as being in a "coastal high hazard" area, be given whatever density imposed a one house per five acre requirement. "Conservation" was used because it was the only such designation the county had at that time, he said.

"I think Civitas would be a fabulous developer, and I would love to see them in Nassau County," Acree said. "But DCA said this has to be this density."

"It has nothing to do with the development, it has to do with the location," Samus said.

Crane Island could still be developed for one house per five acres, or up to 37 homes. The FLUM change would have allowed a density increase to two houses per acre, or 227 homes.

The commissioners voted a second time because the state returned the measure because of technical legal problems.

Public sentiment against the development had grown since the original June vote, but Vanzant said he was not swayed by public opinion.

Deonas said during his statement that regardless of whether the FLUM change was approved or defeated, the issue is likely to land in court on appeals.

Crane Island opponents turn out

The crowd of about 80 that packed the Nassau County Building in Yulee Monday night was overwhelmingly opposed to development on Crane Island.

The majority were orderly when the commissioners defeated a change in the county's comprehensive plan and future land use map in a surprise 3-2 vote. The crowd reacted with a pattering of applause before most left the meeting.

Prior to the meeting, Mary Mahoney, Madeline Pasquale and Richard Kendal, all of Amelia Island, stood in front of the building holding small placards that read "Don't develop Crane Island."

Inside, a few speakers spoke in favor of homes on the island to be built by high-end residential developer Civitas, but most of them worked for or were attorneys retained by the developers.

Most of the speakers, each limited to three minutes, were in opposition.

"I'm here to speak in favor of the development," said Julie Sanford, architect. "It's not about the development. It will be developed. It's a matter of managed growth. (Civitas) are experts at creating

beautiful places for human beings."

"You're elected to represent the citizens of Nassau County," Anne Kendal told commissioners. "The citizens of Nassau County do not want to see the overdevelopment of Crane Island. It would go against the will of the people you're elected to represent."

"You're going to be opening up a can of worms," said William Rabitaille. "It will be a non-ending bunch of harassment (due to airport noise). I ask all of you to reject the development of Crane Island."

"I am against the change in the comprehensive plan and the change in density," said Gordon Reilly. "I'm sensing there's an awful lot of effort to do something that is just plain practically wrong. I believe it is unconscionable. This is why we have a comprehensive plan. This developer wants to put over 200 homes on a tiny little island in the middle of a marsh. They are big-city lawyers and they could care less about Nassau County and the way we live here."

"It is not a position opposing Crane Island. It is a position opposing changing the comprehensive plan to accelerate the changes in a coastal zone," said Phil Scanlan, president of the Amelia Island Association. "We think it is a considerable mistake - allowing acceleration of development to happen and we don't think that's a good idea."

"We've been opposing this since 1991 and continue to oppose it," said Eric Titcomb of the Florida Sierra Club's Nassau County group. "Sierra Inc. implores Nassau County to maintain protections on intracoastal islands."

"You are answerable to the will of the people of the county, each and every one," Joe Waas told the commissioners. "Not the people who make a few bucks and leave, the people who elected you."

Civitas principal Macon Toledano appealed to the assembled crowd.

"You've raised a lot of issues we have tried to address over several years," Toledano said. "This is a piece of private property which has been in private hands since 1973. It had permits. We have worked hard to find solutions. Here we are, 30 years later, asking for some reasonable rights for that property owner that would re-establish some property rights to get some reasonable use out of their property."

"All we really want to do is build a great neighborhood in Nassau County - a place people will be proud to come to," said Vince Graham of Civitas. "We feel we will do a good job and that's what we want to do here."

"This is a good project. These are good people," said attorney Buddy Jacobs. "If it is going to be developed, why not them?" Jacobs noted that the land could not be sold for a park because "the people from the state did not want Crane Island because there was nothing particularly interesting in it."

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Mine study shows threat

By PAMELA SMITH HAYFORD, phayford@news-press.com

Published by news-press.com on November 19, 2003

Opponents of a mine off Corkscrew Road unveiled scientific analysis Tuesday that they say suggests the mine should be stripped of its permits.

A study and computer model commissioned by a resident who lives near the operation showed Westwind Corkscrew Mine would drop water levels under neighboring lands by nearly a foot.

The opponents also met with county officials Tuesday to find out how to go about asking the county to revoke the mine's permit.

Westwind's models and studies showed no effect on nearby groundwater levels.

"I think it's flawed," Tallahassee hydrogeologist Tim Hazlett said of the company's modeling.

Resident Peggy

Apgar-Schmidt said she has spent \$30,000 to \$40,000 fighting the mine, including the modeling by Hazlett and a study by hydrologist Sydney Bacchus of Athens, Ga.

Bacchus said the effect of the mine could be much greater than the model shows because mine pits let groundwater evaporate much faster than if left underground. Plus, she adds, the groundwater there is probably connected through underground rivers [*actually fracture zones between the depressional pot-hole wetlands*] to the same water system that supplies Corkscrew Swamp and some of the county's drinking wells.

Such rivers are common throughout the rest of the state.

"They're all over," said Bacchus, who works throughout the state.

Bacchus estimated the mine loses 158 million gallons of water per year.

During her presentation, Bacchus pointed to dead pines and pond cypress on properties within a mile of the mine.

"It was not the drought," Bacchus said. "What causes that are groundwater alterations."

Mine representative Greg Stuart questions the validity of the studies.

"They have one agenda and that agenda is to shut down the mine," Stuart said. "Again, because this is interfering, in their minds' eye, with subdivision plans."

Earlier this year, the residents challenged the mine's application for a dewatering permit. The company withdrew its application earlier this month.

"What we want to do is work through the DRGR study," Stuart said.

Lee County is studying its so-called Density Reduction Groundwater Recharge area, which now allows only mining, agriculture and low density housing.

"We believe that the DRGR process fits to the T what we're trying to accomplish," Stuart said.

"That's why we withdrew."

Meanwhile, a few local scientists attending the presentation said researching mining's effects would be worth looking into, something the Lee County plan sets forth to do.

"There are a lot of other mines in that same area," said David Ceilley, director of environmental science with the Conservancy of Southwest Florida.

Ceilley said his research shows the most diverse habitats are in swamps with less than 8 inches water.

"A half a foot is ecologically significant," Ceilley said.

Group sues Sarasota to protect forest

SCOTT RADWAY

Herald Staff Writer

SARASOTA - City residents and environmentalists spoke out for nearly 11 hours at public hearings last year for a 23-home development proposed for an upscale neighborhood fringed by the Ringling Museum and Sarasota Bay.

Arguing the need to preserve 8.4 acres of the "city's last urban forest," neighborhood incompatibility and potential land code violations, they decried the plan.

Then they lost the argument.

But some refused to give up.

On Thursday, in the 12th Judicial Circuit Court in Sarasota, an attorney for five residents will argue against attorneys for the city and the developer that land codes were violated by the project's approval.

"This has been a long fight, but this project is not the best thing for the community," said Lisa Wilson, who is not party to the lawsuit but is project manager for the grassroots effort called Save The Emerald Forest.

"We have a very special piece of land we need to preserve," she said, adding the 8.4 acres is the last substantial stand of trees in the city and was once an arboretum owned by publishing magnate William Ziff.

The lawsuit alleges that, among several infractions, the city failed to enforce its zoning rules by allowing lot sizes smaller than requirements allow. Ralf Brookes, attorney for the residents, said a private road and long driveways are calculated as part of the lot sizes to get more homes on the land.

"They are overloading the site," Brookes said. "The developer just wants to get as much as he can out of the lot."

Rick Carlisle, one of four owners of the property called Houses of Indian Beach, declined to talk in detail about the legal issues before Thursday's hearing, but said the lot divisions follow previous developments in Sarasota.

"This is not setting precedent," Carlisle said. "We have not asked for anything special not allowed in the zoning code."

Carlisle maintains the development will invoke modern architectural styles made famous in Sarasota starting in the 1950s, and celebrate the city's history while enhancing the neighborhood.

The lawsuit also alleged the developer should have submitted a tree removal plan and a landscaping plan. Lastly, the lawsuit says due process rights were violated as residents were only allowed to weigh in on staff rulings - which the commission used to approve the plan - when it was too late.

Sarasota Mayor Richard Martin said the city commission was sensitive to resident concerns throughout the process, but the proposal met all the requirements and the commission was obligated to approve it. Martin said the commission had turned other proposals away for the parcel in the past, because they asked for "too much."

"This particular project we considered to be a high quality project," Martin said. "We spent half a day listening to public input. It is not like we made any knee jerk decisions."

Martin said most residents in the area now support the project, in part because people believe it will raise property values.

But Wilson believes the opposition remains as strong and she expects to gain more support as news about the lawsuit spreads. Wilson, with the help of the local nonprofit ReLeaf, is running a Web site called www.savetheemeraldforest.com to inform the public on the issue and help garner more

resident involvement.

Wilson said the first step is to stop the project, but the goal is to preserve the land or at the least ensure any new development preserves as much open space as possible.

The neighborhood has pushed for preservation of the 8.4 acres several years ago, and Wilson has a binder of supporting information including letters from the National Parks Service and Sarasota County, both of which found reason to save the land. But the deal fell through in part because of grant funding problems.

Wilson believes with enough public support, the preservation plan can be revived. The land is too valuable to lose, she said.

H. Bruce Rinker, a forest ecologist, maintains no one has taken a proper ecological inventory of what is on the land and it could be the last old forest in urban Sarasota.

"Even though it may be a small parcel of land, it may hold an important ecological key to what old Sarasota was like," said Rinker, formerly with the Marie Selby Botanical Gardens.

Judges say sulphur plant must undergo special review

St. Petersburg Times; Nov 6, 2001; JOSH ZIMMER;

"*This sets sulphur back to square one*," said Ralf Brookes, attorney for Save Our Bays, Air and Canals, or SOBAC, the citizens group that filed the appeal.

"We still have concerns about odor from the facility, and from fire hazards and from air pollution."

The citizens group is fighting plans to locate the sulphur plant just north of TECO's Big Bend coal fired plant. Slated for federally mandated improvements, Big Bend is one of the worst polluters in Florida.

The decision issued Friday is a setback for the conglomerate of three fertilizer-producing giants who put aside rivalries to form the Big Bend Sulfur facility - Cargill, IMC Global and CF Industries. In a major victory for a local environmentalists, a three-judge panel has reversed a Hillsborough County decision allowing Big Bend Transfer Co. to build a \$40-million solid sulphur processing plant off Tampa Bay without a special review.

Three Hillsborough County Circuit Court judges - Robert Bonanno, Dick Greco Jr. and Gregory Holder - said the County Commission ignored clear language in the land development code that required a proposed building or expansion on more than 5 acres to undergo a detailed planned development rezoning review.

"This sets (solid) sulphur back to square one," said Ralf Brookes, attorney for Save Our Bays, Air and Canals, or SOBAC, the citizens group that filed the appeal. "We still have concerns about odor from the facility, and from fire hazards and from air pollution."

The citizens group is fighting plans to locate the sulphur plant just north of TECO's Big Bend coal-fired plant. Slated for federally mandated improvements, Big Bend is one of the worst polluters in Florida.

A rezoning review would have required Big Bend to prove that the sulphur plant complies with the county's comprehensive plan on issues such as traffic, wetlands and landscape buffering. The

commission, acting on recommendations from county planners, approved the company's industrial development request in January without such a review.

The decision issued Friday is a setback for the conglomerate of three fertilizer-producing giants who put aside rivalries to form Big Bend. The companies - Cargill, IMC Global and CF Industries - want to import and process solid sulphur pellets to create a more competitive market with liquid sulphur, the industry standard here.

Tampa Bay facilities handle 5- to 6-million tons of phosphates and an equal amount of sulphur annually, making the bay area the world's largest handler of both resources.

Big Bend officials had not finished reviewing the ruling Monday afternoon, Cargill spokeswoman Christine Smith said. However, the company was not giving up after spending two years developing plans that could satisfy the concerns of the state Department of Environmental Protection and the county's Environmental Protection Commission, she said. The EPC issued the air quality permit. SOBAC and Freeport-McMoRan Sulphur LLC, one of the world's biggest suppliers of liquid sulphur, are challenging that permit at the state administrative law judge level.

"The only thing I know is we're going on with the project," Smith said. "We just have to see where we're going to go from here."

Neither Senior County Attorney H. Ray Allen, who handled the case for Hillsborough, nor Big Bend's counsel at Holland & Knight could be reached for comment.

According to the ruling, Big Bend said it asked county planners how to proceed and was told a rezoning application was not necessary. But the commission's move "rewrites the clear language of the ordinance," wrote Bonanno on behalf of the other judges.

Big Bend can appeal the decision within 30 days or apply for a rezoning, Brookes said.

By reaffirming the land development code, Brookes said, the ruling will have countywide ramifications for future projects.

Surfrider takes beach access fight to court

By Drew Dixon

Shorelines staff writer

Saturday, January 31, 2004

A beach access advocacy group has sued St. Johns County, demanding the reopening of closed or obscured beach access points in Ponte Vedra Beach and the repeal of other county actions they say keep people from getting to the ocean.

The suit, filed Wednesday by the Surfrider organization in the 7th Judicial Circuit Court, seeks a jury trial for the county commissioners. It charges that they illegally banned beach parking along Ponte Vedra Boulevard last year, that they have allowed the blocking or obscuring of access points along that road and that their recent vacating of a 7,000-foot, 34-foot-wide right of way on the west side of the road also impedes access.

"I believe St. Johns County has been very aggressive keeping people off the beach," said attorney Ralf Brookes, who represents Surfrider. "We'd like a jury trial. I think the people of Florida have a right to decide. They have a right to determine how much in damages should be paid."

The suit says the County Commission violated the First and 14th amendments of the U.S.

Constitution, violated the Florida Public Trust Doctrine and violated St. Johns County's own code that states, "neither the county nor any municipality shall vacate any approach to the beach or allow the same to be used for private purposes."

"They're doing everything they can to keep the beach for the rich people who live there and [keep] the poor folk away," said Brookes, who is based in Cape Coral on Florida's southwest coast.

Deputy County Attorney Michael Hunt repeatedly has said the rights of way were vacated to clear up ownership, which the county couldn't prove it had because of a lack of deeds. He's said the action had nothing to do with beach access.

County Commissioner Bruce Maguire, who represents the Ponte Vedra Beach area, also said beach

access is unrelated to vacating the rights of way.

Brookes, a former assistant county attorney in Sarasota County and marine biologist, represented the Florida Sierra Club's Nassau County chapter in its successful fight to block a proposed change in the future land use for Crane Island, near Amelia Island, which was rejected by the Nassau County Commission last year. He also is a member of the National Surfrider Legal Issues Team.

First Coast Surfrider Chairman Scott Shine continually has threatened litigation after the County Commission approved a parking ban on the boulevard last year, failed to mark about half of the 14 public beach accesses on the road and vacated public ownership on the road's western right of way this month, allowing 67 private landowners to claim the property. All the moves are designed to prevent access to beach paths for the stretch of shoreline between Corona and Miranda roads, Shine said.

"They would have been better off just dealing with me from the get-go," Shine said. "Now, they've got the eyes of the entire state turned on their little area, and people don't like what they see."

Shine insisted the issue over contested beach access points in Ponte Vedra Beach has been ongoing for 25 years. But Surfrider is the only group who didn't give up in the face of local resistance, he said. Residents of the area repeatedly have said they want to preserve the character of the neighborhood by restricting parking. County commissioners have said they banned parking for safety reasons. Maguire got about half the beach access points marked last summer with free signs provided by the state. Parking in the area is "a dead issue," Maguire repeatedly has said.

Not so, Shine said.

"Now it's time to go on the offensive," Shine said. "We've been under siege for the past 18 months. And now we're going to take the fight to them."

"It might be a dead issue to them. ... We are now going to take the issue to a venue of our choosing. The county has not been impartial, they have been biased. The county has made the choice to make this issue one of conflict."

Brookes said a Greenwich, Conn., case supports his claim of a First Amendment violation. In 2001, a Greenwich dispute over access points to the sea came to a head. That's when the Connecticut Supreme Court unanimously ruled that residents-only beach policies violated U.S. and Connecticut constitutions by denying non-residents freedoms of expression and assembly.

Brookes is arguing the county violated the 14th amendment to the U.S. Constitution by failing to give the public "due process."

"There's a number of beach accesses that aren't marked," Brookes said. "We want the county to remove the vegetation and mark them with free signs from the state or we're going to have to go through rich people's yards to get to the beach."

"The county commissioners should be ashamed of themselves. They shouldn't be making it harder to get to the beach, they should be making it easier."

Maguire and Hunt have said any litigation over the county's actions regarding beach access in Ponte Vedra Beach would be invalid.

"It would be irresponsible for Surfrider not to take this to court," Shine said. "They think we're bluffing. We're not bluffing. We will not stop, ever."

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Coconilla crashes in defeat

Collier commissioners can't find the four needed votes to approve rezoning that would have made way for the high-rise condo and marina project

By ERIC STAATS, emstaats@naplesnews.com
February 11, 2004

A controversial proposal to redevelop the former Wiggins Pass Marina went down to dramatic defeat

Tuesday night.

Before a packed board room and after more than five hours of testimony, Collier County commissioners failed to muster the four votes required to approve a rezoning petition to make way for a high-rise condominium and marina project called Coconilla.

The project, proposed for the northwest corner of Wiggins Pass Road and Vanderbilt Drive, spurred worries from opponents about scaring off bald eagles that nest some 800 feet away and about losing public access to Wiggins Pass.

Supporters said they would rather live next door to the high-rise than risk what might come with leaving the land zoned commercial.

Developer Ed Oelschlaeger, president of Tampa-based EcoGroup, said after the vote that he had no comment about his next step.

His supporters, wearing T-shirts and stickers urging commissioners to vote "Yes for Residential," left the board room after the vote muttering complaints about the outcome. Opponents of the development, wearing stickers that said "No to Rezone," cheered the result.

"It was the outcome that we thought needed to happen and a lot of people felt the same way," said Doug Fee, president of the North Bay Civic Association and a leader of the opposition.

Almost 250 people attended the hearing, so many that the county set up chairs and a television in another building to handle the overflow crowd. Coconilla supporters arrived in three chartered buses. Public comment from some 50 people was split on the project.

Both sides faced ups and downs at the end of the hearing as commissioners tried unsuccessfully to reach a compromise.

Commissioner Fred Coyle made the first try, proposing to allow EcoGroup to build two 10-story buildings over parking instead of one 17-story building over parking. The motion failed for lack of a second.

After a 30-minute break and more deliberation, Commissioner Frank Halas moved to deny the rezone. Commissioner Tom Henning seconded it. Commissioners voted 3-2 to deny the motion, with Halas and Henning voting yes.

Commission Chairwoman Donna Fiala then accepted another motion, this time from Commissioner Jim Coletta, returning to the original proposal for two 10-story buildings over parking. Coyle seconded it. Halas and Henning voted no.

Because only three commissioners voted yes, it fell one vote short of the supermajority needed to approve the compromise.

EcoGroup proposed to build 85 high-rise condo units, 10 villa units and 52 boat slips in place of the former marina, which included 450 dry storage spaces for boats. The company had scaled back the plans several times in the past 18 months.

By rejecting the project, commissioners left on the table proposals from EcoGroup to improve public beach and water access.

"I don't understand the logic of disapproving it," Coyle said.

The company had pledged to set aside land for more boat trailer parking at Cocohatchee River Park, put up \$1 million to build a dock to ferry beachgoers to Barefoot Beach Preserve and another \$1 million the county could use to buy land for boat access in the neighborhood.

Besides those benefits, Coyle said, commissioners would not have a say in any commercial project because EcoGroup would be able to build it with only approvals from county staff. That would not guarantee any public access to the water, he said.

What would be built at the site instead of Coconilla worried Pelican Isle Yacht Club resident Elizabeth Redfield.

"I want to see the estuary, not yet another Walgreens," she said.

Attorney Ralf Brookes, representing Coconilla opponents, decried the conversion of public boat storage space into private marinas all over Florida.

"The common man has no place to boat anymore, almost literally," he said.

Halas, whose district includes the Wiggins Pass area, echoed Brookes, saying Coconilla would be accessible only to a "select few."

"I've really got a problem with this," he said.

EcoGroup officials have repeatedly said that a dry-storage marina is not a viable use for the proposed Coconilla site.

Coyle rejected the idea of the county running a marina there. He said that if taxpayers proposed taxing themselves for that purpose, it would be a "perfect solution."

Naples Park civic leader Vera FitzGerald said the loss of boat storage space such as Wiggins Pass Marina is having a ripple effect across the county as more people have to store their boats in their yards or driveways.

She urged commissioners to turn down Coconilla and come up with a plan to buy the site for boating access.

"I just can't believe the county can't find a way to do this," she said.

http://www.naplesnews.com/npdn/news/article/0,2071,NPDN_14940_2645129,00.html

Court rules Hernando can't review plans without public

By DAN DeWITT, Times Staff Writer

Published January 21, 2004

An appellate court, agreeing with an earlier ruling from a circuit judge, has ruled that Hernando County cannot exclude the public from meetings to review development plans.

The suit rose out of the battle between the environmental group, Coalition for Anti-Urban Sprawl and the Environment (CAUSE), and the county over the Wal-Mart SuperCenter on U.S. 19 that was completed last year.

The suit, filed in 2002, claimed that meetings of the development review committee violated the state's open government law and should render Wal-Mart's permit invalid.

The 5th District Court of Appeal ruled the same way that Senior Judge John W. Booth did in November of 2002. It found the meetings did violate the Sunshine Law. But neither the judge nor the court moved to invalidate the permit.

The appeal court heard the arguments in December and issued its ruling, which also required the county to pay the legal fees of lawyer Ralf Brookes, on Jan. 6. CAUSE founder Arline Erdrich said she heard about the decision last week.

"This is a major victory," she said on Tuesday.

But Kurt Hitzemann, the assistant county attorney who handled the case, said the ruling probably would not change much.

Development review committee meetings allowed an array of staffers to consider the project at the same time. They streamlined the review process, the county has argued, by letting developers address all of the concerns at once.

Judge: Open DRC meetings

By MICHAEL D. BATES mbates@hernandotoday.com

Published: Jan 20, 2004

<http://www.hernandotoday.com/MGAO9TAPOPD.html>

For about 18 years, the public has not been allowed to attend Development Review Committee (DRC) meetings. Until recently, there was no outcry from citizens to attend the meetings, mostly dry events dealing with technical, pre-construction talks between developers and county building officials.

That could soon change.

A state appeals judge has upheld a circuit court decision that the DRC be open to the public. The

Coalition for Anti-Urban Sprawl and the Environment (CAUSE), which led the fight for open meetings, has claimed a victory and is asking county commissioners to comply.

"It proved that we were right all along," said CAUSE founder Arline Erdrich. "We said that they were operating out of the sunshine illegally and unconstitutionally and that's exactly what the judge upheld." But Erdrich has her doubts anything will change.

Assistant County Attorney Kurt Hitzemann said county commissioners can either keep the DRC in its present non-meeting format or restructure it and allow the public to attend regular meetings. Hitzemann said he was disappointed, not only with the decision, but the fact that the panel of three judges did not render an opinion.

In Nov. 2002, Circuit Judge John Booth ruled the DRC was violating the state's Government-in-the-Sunshine law by barring the public from the meetings. In a lawsuit, CAUSE alleged the county had violated Florida's open records law, also called Government-in-the-Sunshine, by approving Wal-Mart a permit to build a supercenter in Spring Hill without allowing the public to attend the DRC meetings.

County commissioners appealed the decision, claiming that the DRC is merely a fact-finding entity incapable of making decisions and did not have to include the public. The county also ordered the DRC not to continue formal meetings until the Fifth District Court of Appeals decided.

Instead of meeting weekly with county department heads, developers and engineers have been forced to meet individually with each representative who must sign off on site and building plans. Developers have complained of more red tape and project delays.

Building department officials, past county commissioners and even many residents have maintained through the years that the staff-level meetings are confined only to pre-construction matters and better left to the experts.

But to play it safe, commissioners in May 2002 amended the policy that created the DRC, stressing that it was strictly a fact-finding entity and not subject to the Sunshine Law.

CAUSE attorney Ralf Brooks said Tuesday it is not right to assign such high-level responsibilities to staff members at the DRC level.

As it stands now, if a developer wants to build a regional mall in Spring Hill, and the property was already commercially zoned, the project would not come before county commissioners or planning and zoning board members, Brooks said.

Citizens would have no recourse for input, he said.

"It's time for county commissioners to step up to the plate" and stop skirting their own responsibilities, he said.

Brooks said he also wants to see public input at the DRC level, even if only for commercial or residential projects over a certain size.

"Right now, the public has no place to speak," Brooks said. "They're completely shut out of the system."

Lately, county commissioners have reconsidered their views on the DRC and have debated whether the experts-only approach was outdated in a county experiencing growth pains.

County Commissioner Diane Rowden said the judge's ruling makes it clear that the public should be involved in the permitting process.

"Every time you're more inclusive of the public, the better we are," Rowden said. "The decision has been made and I think we need to sit down and revamp the whole way the DRC is done and include the public."

Rowden does not believe including the budget would bog down DRC meetings.

"From what I've seen, the people who want to be involved in that are not going out there just to stir the pot," she said. "They might have some really good ideas."

Rowden said she is concerned about the other part of the judge's decision, requiring the county to pay Brooks' legal bill in fighting for CAUSE.

G-P discharge permit

by Virginia Wissel

Palatka Daily News 07/04/2002

Ralf Brookes, attorney for Clean Water Network, said during the hearings the judge did not allow any discussion of dioxin in Rice Creek or consider in his ruling the masculinization of female fish as having an adverse effect on the water's environment.

"There will be some spin-off lawsuits coming out of this," Brookes said. "I foresee a potential toxic tort claim resulting from dioxin in Rice Creek."

Brookes added he was glad G-P was cleaning up the wastewater *[through proposed bleaching process improvements over the next 11 years]*, but it "should have happened sooner, and **they should use a wetland treatment system to allow further removal of pollutants** from entering the waters of the state *[to treat the waste further before discharging it to surface waters]*."

Young said several years of sampling reports provided by Georgia-Pacific to the DEP show dioxin contamination in various fish-species caught in and around Rice Creek. These contaminants were so high, Young said, a health advisory should have been issued not to eat the fish.

"The state of Florida has gone out on some pretty thin ice now in order to protect Georgia-Pacific," said Brookes.

Everglades: Public interest triumphs over bipartisan politics

A \$1.4 billion downpayment included in the bill will pay for 10 pilot projects around South Florida, including an underground water reservoir along the Caloosahatchee River.

Saturday, November 4, 2000

By ERIC STAATS, Staff Writer

Ralf Brookes was pounding the halls of Congress last month trying to shore up support for Everglades restoration.

The payoff came Friday when the House voted 312-2 to approve a landmark measure to restore the endangered ecosystem parched by a 50-year-old drainage system.

The bill had been tied up in House and Senate negotiations over how to pare down the price tag for water projects unrelated to the Everglades. Critics, including some environmental groups, had complained that the bill was loaded up with pork-barrel projects.

The Senate passed the negotiated bill Tuesday. With the House vote, the bill goes to President Clinton. He is expected to sign it after the election.

Now the job turns to making sure the \$8 billion project, expected to take at least three decades to build, actually delivers what it promises - enough water to support growing cities and farms while providing for the Everglades, too.

Not everybody is sure that will happen, but attention Friday was on celebrating an overwhelming bipartisan House vote that capped weeks of pushing by people like Brookes.

"It feels futile when you go to D.C., but it really takes everybody working together to get something done in Washington," said Brookes, 37, an environmental attorney who works in Lee County and lives along the Caloosahatchee River.

Brookes said he's been interested in Everglades issues since he wrote his college thesis on legal issues surrounding pollution cleanup in Lake Okeechobee, the heart of the Everglades ecosystem.

Meanwhile, a Golden Gate Estates man with a half-century record of Everglades advocacy said the House vote represents just how far America has come on environmental issues since Congress voted in 1949 to approve the drainage system that left the Everglades in need of resuscitation.

"It's a good solid start (for Everglades restoration)," said Franklin Adams, who played a key role in getting the Big Cypress National Preserve set aside. "It represents real progress."

While the road to this point has been long, the road ahead is longer still, said Mike Bauer, the Naples-based director of the National and Florida Wildlife Federation's Everglades Project Office.

The bill approved Friday authorizes the Everglades restoration project, but Congress still needs to free up the money for the plan.

A \$1.4 billion downpayment included in the bill will pay for 10 pilot projects around South Florida, including an underground water reservoir along the Caloosahatchee River in Hendry County. The pilot projects are meant to test the plan's technology.

Bauer said he will be monitoring the restoration to make sure it is driven by the need of the Everglades and doesn't turn into a water supply project for farms and cities.

Gulf Citrus Growers Association Director Ron Hamel lauded the House vote.

"It's very positive news for the Everglades restoration effort and water users, including agriculture," he said.

SOBAC Receives Grant For Desalination Monitoring

By SUSAN M. GREEN

sgreen@tampatrib.com

Published: Jan 30, 2003

APOLLO BEACH - An environmental watchdog group has received a \$7,500 grant from the Elizabeth Ordway Dunn Foundation to kick off a residents' water monitoring program in Hillsborough Bay near the new desalination plant.

Jeanette Doyle, spokeswoman for the nonprofit group Save Our Bays, Air and Canals, said the grant will help pay for training and equipment.

BJ Lower, SOBAC's technical director, said members primarily are interested in tracking levels of dissolved oxygen and salinity in the water around Tampa Electric Co.'s Big Bend Station, where crews are nearing completion of the desalination plant.

The plant will remove salt from sea water and make it suitable for drinking. The water then will be piped into the public water system.

Group members want to monitor the water to be sure discharge from the plant isn't too saline, which

could threaten marine life.

Ohio-based YSI Inc., which makes precision water-quality measuring devices, has agreed to loan equipment to the civic group, Lower said.

The Elizabeth Ordway Dunn Foundation was set up in 1984 by a Palm Beach woman before she died. The foundation awards numerous grants to conservation organizations throughout Florida each year.

Hillsborough County scientists, as well as consultants for desalination plant developer Tampa Bay Water, also are keeping tabs on water quality through a stepped-up sampling program in the Apollo Beach area.

But Lower said SOBAC isn't convinced those readings are being taken in the most appropriate places.

``We want to double-check and make sure it's right," he said.

SOBAC was created by people opposed to the desalination plant now under construction. The plant will produce up to 25 million gallons a day of drinking water and discard 19 million gallons of leftover salty water into the Bay.

Members worried that the discharge would harm the Bay and wanted the plant relocated or the brine piped out to the Gulf of Mexico.

The group lost a legal challenge to the state permit for the project in 2001. State experts and consultants testified at an administrative hearing that the briny discharge from the plant would not cause significant harm to the Bay.

SOBAC members, which formed in late 1999 and quickly grew to about 1,000 people, announced they would turn their attention to tracking the effects of the plant on the waters where they fish and play.

Lower said he is especially interested in measuring dissolved oxygen levels in the Big Bend area in the hours just before dawn, when the amount of oxygen available to underwater creatures is typically at its lowest.

Experts say Bay organisms consume oxygen at night, depleting the supply. Typically there's a boost in levels during sunlit hours, when photosynthesizing algae pump more oxygen back into the water.

For many years, local scientists have sampled the waters around Big Bend monthly, usually in the early afternoon. Last summer, in anticipation of the desalination plant, Hillsborough County's Environmental Protection Commission installed around-the-clock sampling equipment that will take readings of water temperature, dissolved oxygen and salinity.

SOBAC members have criticized TECO's Big Bend plant for periodic low dissolved oxygen levels and remain convinced that the desalination discharge will worsen the problem, Lower said.

Besides pursuing a private monitoring program for SOBAC, Lower has been lobbying officials to find a market for the salty byproduct to keep it from being dumped into the Bay.

Reporter Susan M. Green can be reached at (813) 657-4529.

The \$1-Billion Water Fix

The Weekly Planet, August 14, 2002

Costly and ecologically risky technology buys the region only a few years until Hillsborough, Pinellas and Pasco counties once again must face up to their water-wasting ways.

BY JOHN PETRIMOULX One billion dollars. That's how much Tampa Bay Water will spend by 2008 to nearly double the amount of water that the agency delivers to its member [communities](#). The water wholesaler for most of Hillsborough, Pinellas and Pasco counties has determined that's what it will take to satisfy the growing area's thirst for water through 2015. Most of the money will buy a giant reservoir and the two largest desalination facilities in the Western Hemisphere. It's a big solution that grew out of big problems. But is it just a short-term answer to a long-term problem with, as critics contend, serious environmental risks?

Tampa Bay Water was created in 1998 to end the region's water wars, which had government leaders sniping at one another over water rights. In the meantime, residents near county well fields watched their own wells run dry and their lakefront property suddenly disappear along with their lakes.

Hillsborough, Pinellas and Pasco, together with the cities of Tampa, St. Petersburg and New Port Richey, agreed to form Tampa Bay Water (TBW) as a single regional water wholesaler. TBW would produce water, for which the cities and counties would pay a single wholesale rate. They would retain the right to set their own retail prices and manage demand.

Elected officials from the member communities would make up TBW's board of directors, with approval authority over plans and budgets.

Soon after its creation, TBW signed an agreement with the Southwest Florida Water Management District to address the issue of well field overpumping. It agreed to reduce groundwater pumping from the current 158-million gallons per day (mgd) to 121-mgd by the end of this year and 90-mgd by 2008.

To replace the lost water and keep up with booming area growth, Tampa Bay Water needed to find more water. Desalination: Boon or Boondoggle? Planners created 19 projects to supply 140-mgd of new water, including an ambitious plan to fill a new 15-billion-gallon reservoir with water from rivers. But one idea for new water came with a lot more sex appeal than the others.

Desalination has long intrigued communities on bays and oceans as a no-brainer source of water. But desalination comes with problems.

The first is cost. Tampa Bay Water lists the price tag of its first plant, which will produce 25-mgd, at more than \$100-million. Because desalination requires a lot of electricity, its production cost makes it uneconomical compared to most other sources of water.

Not to worry. By putting its first facility on the eastern shore of Tampa Bay next to Tampa Electric Co.'s Big Bend power plant, TBW can cut production costs in half because of the smaller amounts of energy and materials required to process lower-salinity bay water.

That economy will not be available for the second desalination facility, slated for a site on the Gulf of Mexico near Tarpon Springs. What's more, construction costs will balloon to \$315-million, primarily due to a pipeline that will discharge the plant's brine byproduct 12 miles offshore.

The environmental risk of its discharge is the other problem with desalination.

Although TBW officials insist the 20-million gallons per day of brine byproduct from its plant at Big Bend will cause no damage to the marine environment, a discharge pipeline was added to the second facility. According to project engineer Don Lindeman, the reason is the environmental issues surrounding the second site. "We have a lot of data on Tampa Bay," he said, "but not on that location."

Critics of the first plant are unmoved by the mounds of data TBW has assembled to prove the brine discharge will not damage the bay. A south Hillsborough activist group called Save Our Bays, Air and Canals (SOBAC) lost a legal battle last year to stop the construction of the plant.

The group's technical director, B.J. Lower, says the key environmental study used to win approval for the project was flawed. "It states that the Big Bend area of the bay flushes out in eight to 10 days," he said.

Carl Goodwin's research for the U.S. Geological Survey showed Tampa Bay takes an average 110 days to flush, says Lower. University of South Alabama professor Wayne Isphording, who has studied all of the other estuaries on the Gulf of Mexico, hasn't found any that flush in less than 100 days, according to Lower.

Lower says a longer flushing time is significant because it means the plant's brine discharge could build up and raise bay salinity to dangerous levels.

Michael Champ, an international expert on environmental contaminants who advises SOBAC, says he has seen estuaries where the higher salinity is too much for the larval stages of marine species and the standing stock was lost. "Jellyfish became the dominant species in these impaired water bodies," Champ said.

The environmental study's author, University of South Florida marine scientist Mark Luther, defends the eight- to 10-day assumption and maintains his findings reflect more up-to-date computer modeling than what was available for Goodwin's 20-year-old study.

TBW General Manager Jerry Maxwell points to several other environmental impact studies to support Luther's findings. But even the analysis TBW commissioned by the Danish Hydraulic Institute on projected salinity changes from the discharge states that the area around the new plant can take up to 60 days to flush. What is certain is any dangerous buildup in salinity can't be measured until the plant begins operation early next year.

All parties agree there will be no shortage of monitoring stations and agencies. Federal, state and county agencies all will collect data. The stakes are high. If the facility doesn't perform as predicted, TBW could face fines and a shutdown of the plant.

Tampa Bay Water's Gulf of Mexico plant, meanwhile, faces different hurdles. Though not located on an environmentally sensitive estuary, permitting may be more difficult because the site lacks the extensive history of study of Tampa Bay.

But even TBW's plan to skirt that problem by piping the brine discharge offshore comes with environmental risk. "I'm not so sure it's a good idea to put the discharge on the hard bottom out there," said Maxwell. Indeed, SOBAC's Lower points to research done in Cyprus that shows because the higher salinity discharge sinks to the bottom, it should be dispersed over a wide area. Building such a dispersal system would further inflate the cost of the Gulf plant.

Technology to the Rescue? Maxwell says TBW is looking for new technologies to be able to deliver water more economically and without harming the environment.

The reverse osmosis (RO) process used in TBW's Big Bend facility has been around for decades. It works by blasting water through screens to separate out salt, producing fresh water and the brine byproduct. Other existing technologies also come with the problem of what to do with the salty discharge.

A next-generation desalination process currently being tested could solve that problem. By the end of 2002, a 3-year-old New Mexico company called AquaSonics International Inc., claims it will have a prototype operating to demonstrate its patented process. Company President Henry Lloyd boasts that the process will revolutionize desalination because it produces only fresh water and salt crystals that can be sold.

"The operating cost of our process is one-tenth of RO," said Lloyd.

The AquaSonics process, called Rapid Spray Evaporation (RSE), involves spraying saltwater through high-pressure nozzles into a heated chamber. The method causes water to evaporate and salt crystals to fall out. The evaporation is then moved into a condensation chamber and the salt gathered up for sale.

Despite the potential of RSE to eliminate the saline discharge into Tampa Bay and the potential to significantly lower operating costs, Maxwell says until the process has been proven, TBW isn't interested. "We couldn't get financing for it anyway," Maxwell said.

As for becoming a test site for the technology, which can be retrofitted on the new RO plant, Maxwell says TBW will do only very limited testing of new technology.

The Economics of Water When member governments agreed to form Tampa Bay Water, they in essence agreed to solve water problems by creating a bigger cup to drink from. They also told TBW not to tell them how much to drink.

It was a signal that they would put more focus on supply than demand. The reason is more politics than economics.

Terry Anderson is executive director of the Center for Free Market Environmentalism, a Montana think tank. He's also an economist who has studied the economics of water, particularly in California. Government officials want to keep water cheap and avoid raising the price for political reasons, according to Anderson. "With prices kept below the market clearing price, demand always exceeds supply," he said. "This plays into the hands of bureaucracies that want to build more infrastructure. Given that the price of water is constantly kept below the point where demand equals supply, there is always a water crisis to be dealt with by building new and larger projects."

Anderson could be describing the Tampa Bay area. Local politicians seem to feel the pain of agreeing to higher prices is far greater than the pain of \$1-billion in water projects financed with long-term bonds. But would simply raising the price of water be enough to bring supply and demand in line? Local governments have been tinkering with price for 10 years but still don't know how important it is to local consumption habits. Norm Davis, Hillsborough's conservation coordinator, says the county began a progressive pricing structure in 1992. Heavier users pay a steeper rate. "Per capita water use this year is 105 gallons per day," he said. "That's down from about 120 gpd when the new pricing system started."

Davis says it's impossible to know how much of a factor price played in the 12.5 percent consumption decrease. Like other TBW members, the county has also used cash incentives to encourage low-flow toilets and rain switches on sprinkler systems and issued retrofit kits to limit water flow of showerheads, faucets and hoses. Price matters to Colette Jaccard, who says her water bill tripled when she moved to Florida from Washington, D.C., five years ago. "I replaced the landscaping with Florida plants and I water them and my roses with recycled water," Jaccard said. "I keep a bucket in the shower and under the air conditioner outlet. I even recycle my dogs' drinking water."

While Jaccard has become an active water conservationist, even posting her water-saving tips on Hillsborough's water department Web site, she says she doesn't think price would make much difference to her neighbors. She may be right.

Jaccard says her water use is as low as 70 gallons per day, 25 gallons below the Hillsborough average, which is typical for the region.

The monthly savings Jaccard chalks up by conserving? It figures out to \$2.67.

Despite progressive pricing, water remains cheap even for heavy users. The county charges \$75, plus basic fees, for 24,000 gallons, more than seven times the monthly average use per capita. The same amount of water bottled from basically the same source and sold in a store brings in \$24,000 on average.

Alternative Sources Pricing is one way to encourage a more distributed solution to water supply problems, as an alternative to ever-larger and environmentally risky water projects.

Other distributed solutions include everything from the cisterns still used in parts of Florida and the Caribbean to gray water systems and even fuel cells, which also offer a distributed solution to energy needs.

The Florida House Learning Center in Sarasota is a model home built from currently available materials and methods deemed to be best suited to the local environment. Much of the home's water comes from two 2,500-gallon cisterns fed by water captured from the roof during rains. "One of the cisterns waters the landscaping and the other goes to the washing machine and toilets," said program Coordinator Betty Alpaugh.

The cisterns were installed by Anthony Fleming, who uses one for his home water supply. "I grew up in the Keys where my family had a cistern for water," Fleming recalled. "When Hurricane Donna came through and city water was out, the whole neighborhood came to our house for water."

Fleming has continued to harvest rainwater for the last 16 years at his current home on Palm Island, a barrier island near Englewood accessible only by boat.

"A 1,000-square foot roof can capture 700 gallons of water for every inch of rain," he said. "In this part of Florida, 9,000 gallons of storage is a three-month supply, enough to get through dry periods."

Fleming says his customers range from his island neighbors to wealthy Floridians who want the security of their own water supply. Fleming says even using captured water only for washing clothes, watering landscaping and flushing toilets can reduce the use of piped-in water by two-thirds.

Gray Water Systems As neighborhood groups clamor for hookups to the growing regional infrastructure for reclaimed water, sources of reclaimed water are already available to households

from washing machines, baths, sinks and showers.

Gray water systems work by feeding water from these sources to a holding tank linked to an irrigation system. The Florida House, for example, recycles water from the washing machine to its banana trees.

Some governments offer economic incentives both for developers and homeowners to install cisterns and gray water systems. Austin, Texas, offers up to a \$500 rebate for installing rainwater harvesting equipment, and last year Texas began waiving the state sales tax for the equipment.

Hays County, in the booming corridor between Austin and San Antonio, offers a \$100 developer fee reduction, a value tax exemption and discounted financing.

"We're the fourth-fastest-growing county in Texas," said Bill Burnett, a Hays County commissioner. "Our aquifers are fragile and we keep putting more straws in them." As for acceptance, Burnett says more people use cisterns in his county than any other in Texas. "The commission just approved a new development that will use only rainwater harvesting for the water supply," he said.

In San Diego County, the city of Chula Vista offers a \$500 sewer credit for homeowners to install gray water irrigation systems. Other governments legislate compliance.

"In the Virgin Islands, cisterns are required by the building code," said Henry Smith, director of the U.S. territory's Water Resources Research Institute. "Every square foot of house requires 10 gallons of cistern capacity. Two-story houses require 15 gallons per square foot."

Fleming says he is eyeing another source of fresh water soon to be mass marketed: fuel cells. "I'm planning to install one, hopefully next year," he said. While fuel cells are designed to generate electricity, some of them, like the fuel cells used in NASA's space shuttles, are set up to provide potable water as well, although the water created by a residential-size fuel cell would be only a few gallons a day.

Needed: A New Path Tampa Bay Water and its member governments have jawboned and induced some of their water users into adopting the first wave of water-conserving tools and methods.

For example, Pinellas County's incentives led customers to install 93,000 low-flow toilets in the last five years. Together with pricing incentives, per capita water use in the region has fallen.

But inside water use in the region remains at pre-conservation levels, based on a 1999 American Water Works Association study, which estimates more widespread conservation would cut water demand by an additional third.

On the current path, TBW and its member communities will continue to struggle to maintain plentiful water even after this billion-dollar round of infrastructure is in place. It's possible some new technology like RSE desalination will radically change the future.

Michael Champ raises another possibility. He says desalination may extend the life of old, polluting power plants like the one at Big Bend. "It's an old plant, and in the future the permit to make drinking water may be more profitable than electricity," he said. "Every power plant in the region will want to add making drinking water from its cooling water as a new revenue source."

At current levels, that would add to Tampa Bay an additional brine discharge of well over 100-million gallons per day.

The short-term nature of Tampa Bay Water's plan will require a new round of costly projects with new environmental risks within a decade. But the plan does buy some time for the region to develop a long-term solution to water needs. Imaginative local leadership and increased individual responsibility for water resources and the environment can move the region to a more decentralized water supply system. That path will provide more water and further restore local treasures like Tampa Bay.

John Petrimoulx, an independent writer in Hillsborough County, can be contacted at jpetrimo@tampabay.rr.com.

Desal woes incense official

When the County Commission is asked for its stance on the recalcitrant plant, one member says a criminal probe is in order.

By BILL VARIAN, Times Staff Writer
Published September 25, 2003

TAMPA - Hillsborough Commissioner Pat Frank keeps charts on the door of her county office showing the amount of fresh drinking water coming out of the new Tampa Bay desalination plant. Rather, the lack of clean water that has flowed from the plant since it was supposed to start operating in January. Frank said Wednesday that problems with the \$110-million desalination project have grown beyond bad luck or incompetence. She thinks they're criminal. And on Wednesday, Frank said she intends to seek a grand jury investigation into Tampa Bay Water's handling of the project, and a reservoir under construction in southern Hillsborough. "I predict that this desal plant will never work," Frank said during a commission workshop.

"I think there are heads that should roll over this." Frank got no backing from fellow board members. She said she does not know when she will request a grand jury probe or to whom she will make the appeal - state or federal officials. She said she was still doing her homework.

Her comments came during a discussion scheduled at the last minute at the request of Commissioner Ronda Storms, who sits on the board of Tampa Bay Water. Storms was seeking guidance on the commission's position for an emergency meeting scheduled by the water utility Friday. The Tampa Bay Water board is expected to decide whether to hold the plant's operator, Covanta, in default or grant it another extension to see if it can get the plant running. Tampa Bay Water general manager Jerry Maxwell said he is as concerned as commissioners by the failure of Covanta to get desalination working as billed. He said he is hopeful that the plant will yet produce the 25-million gallons a day required, but there are financial safeguards if it doesn't.

"Our staff and our consultants, as we talk to them, believe that with some additional pilot work and some testing that the plant can be made to perform," Maxwell said. "That may require some refurbishment, but we don't know that yet." The latest problem: Exotic Asian green mussels are clogging filters that are supposed to clean the brackish bay water. Covanta has known about the problem for months, but some commissioners found out only Wednesday through a report in the St. Petersburg Times.

Frank said she realizes she cannot force anyone to convene a grand jury and her request may go nowhere, particularly without the backing of the full board. "I think that knowing there are so many question marks around the whole project, I've got an obligation to point that out to somebody," Frank said. "What they choose to do with it is up to somebody else."

An opponent of the desal project from the beginning, she said its problems start with its location on Tampa Bay next to the Tampa Electric Co. Big Bend power plant. She contends choice of that site over another on the Anclote River was suspect. She also questions the hiring of companies to run it that have proven financially troubled. The first contractor, Stone & Webster, went bankrupt. Covanta, a New Jersey energy trading company that took over the project, also has had money problems.

Now that it's built, membranes used to filter the water are clogging much more quickly than anticipated. Problems extend to factors beyond the mussels, according to a consultant's report commissioned by Covanta that was completed in July and shared with commissioners Wednesday.

The mussel problem appears to be remedied by using a stronger cleaning solution of the filters, but that presents a dilemma about what to do with the used chemicals. Frank said Tampa Bay Water's reservoir location in southern Hillsborough is also problematic. She reiterated the long-standing belief that it was promoted as a potential Olympic venue as Tampa unsuccessfully sought the 2012 Summer Games.

Maxwell said Frank's concerns are a rehashing of issues that have been publicly vetted before. Tampa Bay Water withstood a legal challenge by one of the Anclote bidders that felt its project was eliminated unfairly, and the reservoir site was chosen long before Tampa pursued Olympic dreams, he said. "Every single action of the Tampa Bay Water board is taken publicly," Maxwell said. Under its latest deadline, Covanta has until Oct. 1 to pass a 14-day test run in which it produces the required drinking water problem free. But the company has just started the trial, meaning mathematically it cannot clear the finish line.

Covanta is seeking a 17-week extension and is negotiating with other companies, including a competitor, U.S. Filter, for help. Talks were continuing late Wednesday, Maxwell said. If the Tampa Bay Water board refuses to grant the extension Friday, Covanta could be found in default and would face \$465,000 in fines and have to produce more than 306-million gallons of water.

Fines would climb daily and Tampa Bay Water could ultimately go after a \$23-million performance bond and use it to finish the project. Covanta would have a 48-day "cure" period to attempt to fix the problem. Commissioners on Wednesday voted to ask that Tampa Bay Water share news sooner and seek the opinion of the Agency on Bay Management before pursuing solutions that could cause environmental harm. The vote was unanimous.

Frank said she will make her grand jury request separately. A majority of board members said that forcing a default on the contract could lead to no one running the desal plant and a long and costly legal fight.

As part of their vote, though, they sought additional information from Tampa Bay Water so they could make more informed decisions.

"I agree with my colleagues. It's very serious," said Kathy Castor, the commission's other Tampa Bay Water representative. "But this could end up in litigation. I'm not convinced yet that (default) is the best course of action."

- Times staff writer Craig Pittman contributed to this report.

Desalination plant mired in standoff

Tampa Bay Water wants the plant turned off, saying salt filters have been damaged. The operator refuses.

By CRAIG PITTMAN, Times Staff Writer

Published January 10, 2004

Tampa Bay Water has ordered its troubled desalination plant shut down for a month amid concerns that the membranes used to filter salt out of the water have been damaged by its main contractor. But Covanta Tampa Construction, which is operating the \$110-million plant, refuses to turn it off. The standoff marks a new stage in the bitter dispute between Tampa Bay Water and Covanta. "We don't have any intention of stopping the operation of this facility if we're not convinced we're doing any undue harm," Covanta vice president Scott Whitney said Friday. But the company that makes the membranes contends Covanta has damaged them so much that it will not honor the warranty. Covanta filed for bankruptcy in New York in October, just as Tampa Bay Water was on the verge of firing the company over repeated delays in finishing the plant. Filing for bankruptcy blocked the firing, and also prevents Tampa Bay Water from sending in workers to shut down the plant, the largest in the nation. "Our hands are tied," said Tampa Bay Water engineering manager Ken Herd. "We can't physically go out and close the valve." The membranes are crucial to the plant's operation, and their long life is crucial to the rates customers will pay. Each of the 10,000 membranes costs \$500, so replacing all of them would total \$5-million, Herd said. In setting water rates, Tampa Bay Water planned on each membrane lasting five to seven years. Replacing them more often would drive up water rates, utility officials say. The Apollo Beach desal plant is supposed to take 40-million gallons of seawater every day, force it through the tightly woven membranes and produce 25-million gallons of freshwater and 15-million gallons of brine. The seawater comes from Tampa Electric Co.'s Big Bend plant, one of the first places that an exotic invader, the Asian green mussel, was discovered in the United States. According to Covanta, tiny hairs and other organic material from the mussels have clogged the desal plant's membranes faster than expected, requiring extensive cleaning. That led to a dispute with Hillsborough County over disposal of the cleaning solution, and extensive delays in completing the plant. In October, Tampa Bay Water declared Covanta in default. Although the plant is still not officially finished, Covanta has nevertheless been producing about 20-million gallons of drinking water a day. Utility officials recently told a judge they desperately need that water to slake the thirst of 2-million people in Pasco, Hillsborough and Pinellas County. Whitney said he was confused by Tampa Bay Water's recent demand that the plant shut down. "Do they need the water or don't they?" he asked. The problem is that on Christmas Eve the attorney for the manufacturer of the membranes, a California company called Hydranautics, notified Tampa Bay Water officials that in producing all that water Covanta was messing up the membranes. In fact, Orlando attorney Ben Subin wrote, Covanta had so abused the membranes that Hydranautics now considers its warranty on them to be void. Covanta is pumping the water through the membranes at too high a pressure, he wrote, damaging their ability to let water through while filtering out everything else. Whitney contended the pressure is within the limits set by Tampa Bay Water and Hydranautics, and thus there is no reason to stop. But Herd compared it to revving a car's engine to a dangerous level just to go 30 mph. "Maybe the car's running now," he said, "but it's not going to be run long in that condition." [January 10, 2004]