Citizens Growth Management Forum
March 7, 2015
By Virginia Sherlock of Littman, Sherlock & Heims, P.A.

LITIGATING THE MARTIN COUNTY DIFFERENCE: DEFENDING OUR URBAN BOUNDARIES, OUR RIVERS AND ESTUARY, WETLANDS, WILDLIFE AND OUR QUALITY OF LIFE

Donna has given me 12 minutes to speak to you, so I've broken my talk down to four public comments . . . I only wish I could cram as much into each three-minute speech as Jackie Trancynger or Myra Galoci or Henry Copeland or Donna Melzer does.

Thank goodness Maggy Hurchalla has set out many of the issues related to litigating the Martin County Difference in materials that are available for careful reading.

For my four short comments regarding litigation to protect our urban boundaries, our rivers and estuary, wetlands, wildlife and our quality of life, I have identified four types of challenges the county is currently defending.

The first is from what I call the "quality of life deniers." These are the litigants who claim that our local government and our local government regulations cannot be used to protect and preserve our quality of life.

This is what King Ranch and Becker Groves and Hobe Grove and Lake Point argued in the challenge to the amendments to Chapters 1, 2 and 4 of our Comp Plan.

They said quality of life can't be defined. It can't be measured. It can't be defended or protected.

Seriously?

I'll bet everyone in this room knows what quality of life means to Martin County residents.
Let's see.
Everyone who knows what quality of life means – raise your hand.
And everyone who believes that our quality of life is worth defending, clap your hands together.
All right.

My second comment is for litigants who think the rules don't apply to them. These are the owners of the Flash Beach Grille and the operators of the Lake Point rockpit.

These are the litigants who think someone else should provide wildlife habitat and preserve native vegetation. Not on their property. These are the litigants who think someone else should protect our rivers and estuary and wetlands. Not on their property.

These are the litigants who think the rules that everyone else has to follow don't apply to them.

But the rules do apply to the owners of the Flash Beach Grille and to the operators of the Lake Point rockpit. The rules apply to you and to me and to all Martin County residents and property owners.

If we don't defend our rules, we have no rules.

The third comment I have is for litigants who say they're entitled to break the rules because staff said so.

That's the HM Property Investments litigation over the Martingale Commons project, an urban boundary-buster. The developers claim they didn't read all the PUD agreement documents that were approved and in place when they acquired the property in a foreclosure sale. But staff said they could do what they wanted to do with the property, the developers said. They don't want to follow the timetables for development that were previously approved. A staff member told them they could do what they wanted, the developers said.

Of course, the staff member the developers claim to rely upon is deceased. He's not here to testify about what he really told the Martingale Commons developers. But even if he were, Florida law is well-established that a single staff member cannot bind a county government, cannot waive the rules for development, cannot authorize a project that is inconsistent with a comprehensive plan.

In considering this issue, one appellate court judge wrote that allowing a single unelected staff member – rather than a majority of an elected commission – to make the rules or to apply the rules would be to invite all sorts of "mischief" – that's the word the judge used.

Imagine a process that would require the county to honor a verbal commitment supposedly made by any county staff member to allow a developer to simply ignore or violate the rules.

That's what the Martingale Commons case seeks to establish.

That's an absurd conclusion that not only can be defended but must be defended by our county attorney.

Finally, my fourth category of litigants engaged in challenging the Martin County Difference is the bully.

That's the property owner or developer who says, give me what I want or I'll sue you.

That's the Avalon Ventures litigant, who demands maximum density zoning on property on Federal Highway and Seabranch Boulevard and refuses to budge or give up a single unit despite vocal opposition from surrounding property owners who want to preserve the character of their neighborhood.

That's the Lake Point rockpit owners who want to force the county to let them do whatever they want without regard for our comprehensive plan and land development regulations by suing and

trying to bully government agencies and Maggy Hurchalla. They have seemingly unlimited money to spend on litigation and to recruit vicious anonymous e-mailers and giveaway newspaper publishers to disseminate their bogus arguments.

The bully is All Aboard Florida who wants to – well, I'm not sure exactly what AAF wants to do, but it's clear that the economic viability and, yes, the quality of life of Martin County businesses and residents are entirely irrelevant to the AAF plan, whether it's to increase freight train traffic or to actually run 32 high-speed passenger trains a day through the Treasure Coast.

We have to stand up to the bullies.

We have to defend litigation and legal challenges or risk becoming a target for every politically-connected and wealthy bully who believes that quality of life means private profits and that the only green that matters is money.

Our new county commission inherited more than potholes and crumbling bridges and a gutted comp plan from the old county commission.

There are currently about 50 active litigation and pre-litigation cases involving the county. Some are negligence cases, injuries that occurred at Sailfish Splash Waterpark, Indian Riverside Park or other county properties. The county has insurance coverage that pays for the defense of those types of claims.

Some are eminent domain cases handled almost entirely by state agencies. Some are construction defects cases, like a dispute over the play surface installed at Jensen Beach Elementary school or the failure of a developer to install infrastructure at Port Mayaca Plantation before going into foreclosure.

There are animal control cases and state rule challenges and long-standing litigation like the Lamar billboard case. And there is, of course, the legal fight over management of the St. Lucie Inlet.

The county attorney's office handles much of the litigation but needs outside help to adequately represent the interests of the county in major litigation like the Lake Point lawsuit and the Comp Plan challenges.

I've set out some of the costs associated with these matters in your handout – along with other costs the county assumes in other matters

It is inescapable that defending litigation commenced by quality of life deniers or rule nullifiers or bullies costs money. A lot of money.

But at the end of the day, the real question is not whether we can afford to preserve the Martin County Difference, to defend our urban boundaries, our rivers and our estuary, our wetlands, wildlife and quality of life.

The real question, is can we afford not to