LITIGATION FACTS AND FICTION

Martin County Conservation Alliance Forum

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By Maggy Hurchalla

Chapters 1 and 2, Martin County Comprehensive Plan

On Aug. 13, 2013, the Martin County Commission voted 4-1 to adopt Ordinance 938 which consisted of comprehensive changes to Chapters 1 and 2 of the Comprehensive Plan.

When the Comp Plan was first adopted in 1982, Chapter 2 opened with these words:

> Martin County has endeavored to establish a Comprehensive Growth Management Plan which broadens, enhances and protects the quality of life for its residents. The overall goals for the Comprehensive Growth Management Plan are keyed to maintaining quality residential and nonresidential uses, natural resource conservation and preservation of beneficial and protective natural systems, enhanced economic development and fiscal conservancy.

In 2009 a group of developers' consultants presented the County with a massive rewrite of the plan that took out this language and a lot of other important policies.

After the 2012 election, amendments to Chapters 1 and 2 were created to put back what had been taken out and what had worked so well for decades. The amendments included updating of obsolete data and clarification of inconsistent policies.

Hundreds of residents attended ten different meetings. They sent in hundreds of emails in support of the amendments. The goals were put back in the Plan. A new section requiring the vote of four commissioners to undo critical Plan policies was added. Those critical policies included the 4-story height limit, the 15-unit-per-acre density cap, the urban boundary, protection for residential neighborhoods, and wetlands protection.

A policy was added in Chapter 2 that stated that official actions of the county would ensure and support restoration of the St. Lucie River.

Lake Point, King Ranch, Becker Groves, and Hobe Grove challenged the amendment. They claimed it was illegal to have a policy that protected the quality of life of residents. They said it was illegal to require a super-majority to protect the height limit and other critical policies. They objected to using more accurate population projections. They objected to "restoring natural resources," requiring "conservative prudent fiscal management", and protecting wetlands and drinking water.

The County hired Tallahassee land use attorney Linda Shelley, a former head of the state planning agency, to defend the amendments. A hearing was set for the spring of 2014 but was later continued to the fall. Shortly before the hearing, three of the four challengers dropped their challenges. The only policy the County gave up was a requirement that when agricultural land received a Plan change to urban use, the owner would lose the agricultural tax exemption. All other changes involved minor rephrasing of policies to clarify their meaning.

Lake Point's only request was that it be made clear that the policy which made approvals obtained by fraud null and void was not retroactive and would not apply to their project.

Hobe Grove – the super city proposed on Bridge Road west of the Turnpike – continued its challenge but narrowed the scope. A hearing was held before Administrative Law Judge Suzanne Van Wyk in September of 2014. The challenger asserted that the amendment was illegal because it was drafted by Maggy Hurchalla, an incompetent person without a planning degree. The challenger's expert witness testified that the County must allow negative environmental impacts to the estuary in order to encourage economic growth.

On behalf of the County, the former head of the Department of Community Affairs, Tom Pelham, testified that the amendments were in compliance with state law. The Executive Director of 1000 Friends of Florida and former head of planning for DCA, Charles Pattison, testified that the amendments were in compliance.

The case is pending a recommended order to be issued by Judge Van Wyk.

The mythology being created by the folks representing Big Sugar, Lake Point, King Ranch and Hobe Grove is that an overly restrictive but incompetently written plan amendment intended to stop growth was rammed through without any public input or data analysis to support it. The myth continues with the conclusion that expensive litigation followed and the County was forced to back down and rewrite the amendment.

All aspects of that story are pure mythology with no basis in fact or law.

Had the County actually agreed with the challengers, we would have gone back to the seriously weakened 2009 version of the Comp Plan that replaced the "Good Old Comp Plan" that most people agree is what has kept Martin County different.

Lake Point

Lake Point is a rockpit in western Martin County just off State Road 76 near Lake Okeechobee. You can see it on Google Earth.

The project started as a 20-acre subdivision for polo players on land that was originally owned by Florida Crystals. The first subdivision approval occurred in May of 2007. In December the

project managers asked for permission to expand the lakes in the subdivision because they had found rock there that would hurt the horses' hooves.

Later testimony indicated the rockpit expansion was intended to provide revenues to tide the project over until the economy recovered. In January of 2008 the 1,000-acre subdivision was purchased by a group headed by George Lindemann Jr., best known on the internet as the young man who had his show horse killed for the insurance proceeds and spent time in federal prison.

In the spring of 2008, the Lake Point group proposed a public private partnership to save the Everglades and the St. Lucie River by expanding the mining operation to an additional 1,000 acres that they were planning to purchase from Florida Crystals. The owners agreed that they would have the right to mine rock for 20 years and would then turn the land over, free of charge, to the SFWMD.

The District signed an acquisition and development agreement with the owners that allowed for the rock mining. It required the owners to provide earthwork for a stormwater treatment area that would be completed by the District when the property was turned over to SFWMD.

Martin County signed an interlocal agreement with the SFWMD laying out certain requirements. It agreed to exempt the project from the normal approval process that private projects go through on the condition that it follow all Martin County Comprehensive Plan policies and land development regulations.

In January of 2013, the County Commission asked staff to agenda a discussion as to whether the project was meeting the conditions of its approval and the Interlocal Agreement. I sent an email criticizing the project. The Board discussed project compliance but took no action.

In February of 2013, Lake Point sued Martin County, the SFWMD and Maggy Hurchalla.

The case has been tied up in expensive litigation ever since. Lake Point has five or six attorneys working on the case. It appears to be a SLAPP suit – a strategic law suit against public participation which is meant to silence critics and frighten government agencies out of any attempt to enforce contract provisions.

Lake Point now claims they are exempt from any Martin County regulations. They claim that the District has violated the acquisition and development agreement by failing to allow them to sell water pumped from the St. Lucie Canal to municipalities in Palm Beach and Broward County.

The original concept sold to the County was that the project could remove and store discharges from Lake Okeechobee that were damaging the estuary. The new concept is unrelated to Lake discharges. Such discharges are intermittent and unpredictable and not a stable source of water supply for a municipal utility.

Instead, the project would convert a permit to use water from Lake Okeechobee to grow sugar cane into a permit to sell water off-site. This appears to be in conflict with Florida water law.

The SFWMD is defending with in-house counsel. Martin County has hired John Fumero, a former attorney for the SFWMD, to represent the County. Ginny Sherlock and Howard Heims are representing Maggy Hurchalla. Find out more at slappmaggy.com.

The Lindemann group has probably spent over a million dollars on the litigation so far. The three defendants together have spent half of that but have been more competently represented. As with other SLAPP suits, the Lake Point lawyers appear to be most interested in costing time and money rather than in any hope of winning.

The County's attorney updated the Board on the litigation at the March 3rd Commission meeting. The report along with public comments can be seen on county TV:

Go to www.martin.fl.us
Click MCTV on bottom right
Left top click "public meetings"
Right top BCC meeting 3/3 click "video"
Under the picture on the left click "jump to"
At the bottom of the list – next to last item - click "Request For Private Attorney-Client Session"

Attempts to affect public opinion in this case started before the lawsuit. A 2012 Stuart News article reported that Lake Point gave $32,000 to Martin County Commission campaigns over the previous five years. This may have helped previous pro-growth commissioners believe it was a wonderful project.

Leading up to the 2014 Republican primary, the "Hobe Sound Currents" edited by Barbara Clowdus continued to print articles accusing Maggy Hurchalla and Sarah Heard of illegally hiding emails from Lake Point. Clowdus' publication appears to be supported by Florida Crystals and Lake Point.

In the last week of the primary, Lake Point entities contributed over $100,000 to candidates opposing Sarah Heard and Ed Fielding. Stacy Hetherington, Ed Fielding's opponent in the primary, was a Lake Point employee.

As candidates, both Clowdus and Hetherington proclaimed love for the river and the Comp Plan but campaigned on the assertion that the county was wasting money opposing Lake Point and defending challenges to the Comp Plan.

During the campaign, anonymous emails and pop-up ads were disseminated attacking Heard and Hurchalla on behalf of Lake Point.

Clowdus' publication has become "Martin County Currents" and is again being distributed, continuing to represent the views of Big Sugar, Lake Point, and King Ranch.

The latest mythology on the Lake point lawsuit from the most recent Currents is:

"Our commission majority's decision to deliberately shut down a water restoration project that could divert at least 10 percent of the Lake Okeechobee discharges that impact our estuary, clean the water, and send it south at no cost to taxpayers, and without harming wetlands, not only stole a chance to mitigate the Lake Okeechobee discharges, but the lawsuit is costing hundreds of thousands of Martin County taxpayer dollars."

Lake Point has not been shut down.

And it cannot possibly, under any scenario, divert 10% of the Lake Okeechobee discharges. The maximum theoretical capacity of the proposed stormwater treatment area is 90 cubic feet per second. Discharges from the St. Lucie Locks in 2013 were 9700 cubic feet per second.

Chapter 10 Sanitary Sewer Element

In December 2014, the County adopted a Comp Plan amendment updating the Sanitary Sewer Element. Corrections were made to out-of-date data and inconsistent provisions. The main thrust was to put local septic system policies back into the Plan. A second aim was to prohibit future package plants and delete the Expressway Commercial land use from rural I-95 Interchanges.

From 1982 to 2009, Martin County had the strictest policies in the state on septic systems for new development. There is general agreement that the minimum state standards are totally inadequate. They allow large high-risk systems for commercial and multifamily residential uses. Setbacks are inadequate. High density residential subdivisions on small lots are allowed.

The Martin County policies worked well. They did not stop growth. They did limit the number of new septic systems in the county. There are up to 400,000 septic systems in the watershed of the Indian River Lagoon Only 25,000 of them are in Martin County. Through Comp Plan policies, the County also reduced the number of package plants that were polluting the Indian River Lagoon from over 100 to 19.

The same group of developers' consultants that drafted changes to Chapters 1 and 2 in 2009 prepared language that removed all septic system policies from the County comp plan. They argued that those policies were unnecessary and hindered economic development. No data and analysis was provided to show the minimum state standards were adequate. Nonetheless, the County Commission directed staff to accept the rewrite and adopted the proposed language.

Luckily for county residents who care about polluted waterways, the commission did not scrap the land development regulations which continued to enforce local requirements.

Opposition to the recently approved amendments to restore septic policies in our Comp Plan was led by King Ranch which owns a large amount of agricultural acreage in Martin County under various names. They recruited support from local farmers, the State Farm Bureau, and the state Department of Agriculture, led by Commissioner Adam Putnam, one of several government officials who participated in a hunting trip to King Ranch in Texas sponsored by Big Sugar.

Their position was that:

– The county could not regulate agricultural development because of the Right to Farm Law
– Rural septic tanks do not cause pollution
– State regulations are sufficient. Since the state allows septic systems with flows as high as 10,000 gallons per day, the county should do likewise. Martin County Land Development Regulation limitations are 2,000 gallons per day for both small water systems and septic systems.

King Ranch stated in an informal meeting that they also opposed prohibition of utilities in the Secondary USD. They said they owned land in the Indiantown Secondary that could be developed at maximum density and minimum lot sizes only if water and sewer lines were available.

This morphed into a side issue as to whether existing two-acre lots near the Loxahatchee River should be forced to hook up to the sewer system operated by the Loxahatchee River District. This supplied a confusing distraction since the current Plan does not allow such forced hook-ups for large lots in the Secondary USD. The Loxahatchee River District provided data which showed coliform bacteria from septic systems in the Loxahatchee River. That was cited as proof that the two-acre lots were the cause of the high bacterial levels. However, review of data supplied by the District clarified that there were many other higher density subdivisions with smaller lots in the immediate area that were on septic. No evidence was presented showed that the two-acre lots were the source of the contamination.

This confusion was turned into the assertion that Martin County had adopted policies that would vastly increase the number of septic systems in the County.

That's not true.

First, while there are 341,000 acres in Martin County's unincorporated area, the undeveloped portion of the Secondary is only 1,400 acres. Second, the Chapter 10 amendments allow exactly the same number of septic systems in new subdivisions in the Secondary as the current Comp Plan allows. The Commission voted in October to send the Chapter 10 amendment to the state for review. Commissioners Haddox and Smith voted against it.

Commissioner Haddox criticized staff for amassing data and analysis in support of the amendment. He said he felt they had not presented sufficient data against the amendment. He also said he felt the amendment was not about protecting the river but was designed by

environmental extremists to stop all growth. He said he felt it was very important to compromise on the issues to avoid the polarization that left Martin County in warring camps on environmental issues.

Commissioner Smith opposed the amendment because he said he felt strongly that it was unfair to limit the use of septic systems for new development until all existing septic systems in the urban area were hooked up to sewer.

In December the Commission adopted the Sanitary Sewer Element amendment with Commissioners Haddox and Smith dissenting. Commissioner Haddox predicted that litigation would follow because he believes that what the amendment did was illegal under the state's Right to Farm Act (which prohibits local governments from enacting regulations that interfere with bona fide farming operations).

King Ranch and other agricultural interests challenged the amendment.

The County again hired Linda Shelley to defend the amendment.

The mythology being created by the folks representing Big Sugar, Lake Point, King Ranch and Hobe Grove is that Chapter 10 is another case of drafting incompetent Comp Plan changes and wasting money on litigation.

The same anonymous emailer who circulated attacks on Sarah Heard and Maggy Hurchalla related to Lake Point, the Chapters 1 and 2 amendment, and the 2014 election campaigns recently distributed an attack editorial from the Martin County Currents that charged that the County again adopted "substandard, easily challenged amendments that cost us millions of dollars in unbudgeted legal fees – before they get rewritten and parts tossed out."

The amendments that were complained about in the past were not substandard and were not rewritten and tossed out.

The Chapter 10 amendments have the most complete set of supporting data and analysis that has ever been presented with a Martin County Comp Plan amendment. The challengers have not presented ANY data and analysis in support of their position.

They go on to argue that the restriction on septic systems will strangle the tax base. They adopt Commissioner Smith's position that until we follow the moral imperative of hooking up all existing septic systems (at a cost of at least $15,000 each), it is wrong to put any limits on the proliferation of new septic systems.

That argument appears to assert that until all the horses are caught, the barn door should not be shut.