

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT  
REGULATORY MEETING  
HIGHWAY 100 WEST  
PALATKA, FLORIDA 32178

11656  
or 381

May 10, 1994  
2:45 p.m.

Items 126 and 127

Application by Coy Koontz

Members of Governing Board present:

- PATRICIA T. HARDEN, Chairman
- LENORE McCULLAGH, Vice Chairman
- WILLIAM SEGAL, Secretary
- REID HUGHES
- JOE E. HILL
- JAMES H. WILLIAMS
- DENISE M. PRESCOD

Members of Staff present:

- KATHRYN MENNELLA, General Counsel
- TONY COTTER
- LIZ JOHNSON
- JEFF ELLEDGE
- CHRIS SWEAZY
- HAL WILKENING
- JOHN WEHLE
- HENRY DEAN
- CHARLES MYERS

COPY

ALSO PRESENT: Bill Fogle, for Applicant  
Coy Koontz, Applicant

REPORTED BY: Mary K. Shotts, RPR, Deputy Official Court  
Reporter

- - -

1 May 11, 1994

2:45 p.m.

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3 MR. ELLEDGE: Getting back to the regulatory  
4 agenda, items 126 and 127, they are found in the  
5 addendum. This is an application by Coy Koontz to  
6 construct a commercial development in the  
7 Econlockhatchee Basin. The project involves the  
8 filling of 3.4 acres of wetlands and .3 acres of  
9 uplands in the Riparian Habitat Protection Zone of  
10 the Econ River System for commercial development.  
11 We are recommending denial of this permit  
12 application for reasons that I will state.

13 First, I'd like to show you pretty much where  
14 this property site is in terms of the basin. You  
15 can see it's on State Road 50 just east of the  
16 eastern extension of the East-West expressway. The  
17 Econlockhatchee River is where on this, Liz? Can  
18 you put your finger on where the river runs?

19 MS. JOHNSON: It joins up with the Econ over  
20 here, over here in the corner.

21 MR. ELLEDGE: And this is a little tributary to  
22 the Econ. This is on State Road 50 and it's east of  
23 the East-West Expressway. Next, Liz. The project  
24 site consists of both forested and herbaceous  
25 uplands and forested and herbaceous wetlands.

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The green cross-hatched area is wetlands, all in the Riparian Habitat Protection Zone of the Econ. The area at the upper part of the drawing, that's got the black cross-hatching, is the area proposed to be developed. The read and blue areas are uplands. The red is uplands that are within the Riparian Habitat Protection Zone and the blue areas are other uplands. As you can see, they're proposing to develop approximately 3.7 acres, I believe, there towards the upper part of the drawing. And the little roadway is actually a cul-de-sac that runs off of State Road 50. This property does not front directly on State Road 50. It fronts on this little access road. Thanks, Liz.

In reviewing this project against our permanent criteria we've got both the MSSW and the dredge and fill permits here. Both of our rules address wetland impasse. The surface water permitting rule requires that applicants demonstrate that their proposed surface water management system will not adversely effect the functions that wetlands provide to fish and wildlife.

In the dredge and fill rule there is a seven part public interest test. One of those public interest criteria is that the projects will not

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adversely -- well, addresses the conversation of fish and wildlife. In reviewing this project we found that the project is going to result in the loss of 3.4 acres of wetlands and also some adjacent .3 of an acre of upland that are RHPZ. This will adversely effect the conservation fish and wildlife of the Econlockhatchee Basin and will adversely affect the functions that wetlands provide for fish and wildlife.

In addition, in the dredge and fill criteria we found that it will adversely affect the condition of these wetlands and their ability to -- it will adversely affect the functions being performed by these areas in the current condition of these functions. Therefore, the project without mitigation does not meet our permanent criteria. The applicant proposes mitigation to preserve the remaining part of this parcel, the Southern part of the parcel, which is approximately nine -- is it 9.2 acres of wetlands and the adjacent uplands, a little over 10 acres total.

The staff in reviewing this mitigation plan has found that it does not offset the loss of functions provided by the 3.7 acres that are being developed.

Now, you can put up the next. We have

1 suggested to the applicant ways for this project to  
2 possibly meet the criteria and I'd like to go  
3 through and discuss a couple of those. The on-site  
4 mitigation does not meet the rule requirements. We  
5 would suggest that development of up to .7 of an  
6 acre of the wetlands and .3 of an acre of the  
7 uplands at the northern part of the parcel could be  
8 accomplished and meet our criteria with the  
9 preservation of the remaining portion of the parcel  
10 of mitigation. That's one option for permitting  
11 this project.

12 Other options for permitting would all include  
13 off-site mitigation. We've got a couple of examples  
14 of parcels in which off-site mitigation could occur.  
15 The first parcel is the Hal Scott Preserve. This is  
16 a district owned piece of property on the  
17 Econlockhatchee River in Orange County. This shows  
18 you the relationship of this parcel to the proposed  
19 project site. It's approximately four, four and a  
20 half miles southeast of the project site. There are  
21 on the Hal Scott Preserve some existing roadways on  
22 which culverts have been crushed and become  
23 ineffective. The replacement of these culverts  
24 could enhance the hydrology in the systems and  
25 provide some enhancement of the wetlands and uplands

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on the Hal Scott parcel.

The next alternative is on the Demetree property. This shows you the relationship of the Demetree property to the project site. Again, it's north, northeast of this project site approximately six or seven miles away, several miles north, northeast and I believe the Demetree property is in Seminole County.

In any event, in the Demetree property there are existing ditches that connect the wetlands and adversely -- we believe they adversely affect the hydrological condition of those wetlands. These ditches could possibly be plugged or otherwise restricted to restore the hydrology of the wetlands system. We would recommend that if there were an off-site mitigation plan developed and proposed for this site that it resulted in the enhancement of 50 acres or more of wetlands that that could in addition to the preservation that the applicant has proposed be adequate to offset the impacts of this proposed project and could make this project permitable.

We just wanted to make it clear to the Board that we have looked at alternatives for this project site. There are ways that the project could become

1           permissible with adequate mitigation or by reducing  
 2           the impact on the project site or some condition of  
 3           those two.

4           We have informed the applicant of some of these  
 5           alternatives. The applicant has not responded in  
 6           writing as required by the dredge and fill rule of  
 7           whether or not they would implement any of these  
 8           alternatives.

9           I have Liz Johnson here who is the ES reviewer  
 10          in this project, if you have any questions of her.  
 11          Pat also is here and Kathryn Mennella and Tony  
 12          Cotter have worked on the staff report as well, if  
 13          you have any questions of them or myself. We have  
 14          the applicant here. The applicant's agent Bill  
 15          Fogle is here to address the Board as well.

16          Are there any questions of the staff? Yes.

17          MR. SEGAL: Mitigation options that you have  
 18          offered, you have any idea what the costs are?

19          MR. ELLEDGE: No. We have not prepared an  
 20          estimate of the cost on these sites. I think it  
 21          would be very minimal. We're talking about putting  
 22          some culverts in, a roadway on one property and  
 23          flooding some ditches on the other side. It would  
 24          be very minimal cost. Those would have been  
 25          coordinated with the district and would be subject

1 to your approval since those are district lands.  
2 But we've tried to find some options that we thought  
3 were practicable for the applicant to perform and we  
4 feel that they would be practicable.

5 MS. HARDEN: Okay. No more questions at the  
6 moment. Mr. Bill Fogle requested to speak.

7 MR. FOGLE: Good afternoon. My name is Bill  
8 Fogle, and I'm a civil engineer, president of Civil  
9 Design Group in Orlando, Florida. Address is 401  
10 South Rosalind Avenue, Suite 200. I've been  
11 retained by Mr. Coy Koontz to represent him both in  
12 the dredge and fill permit and service water  
13 management permit application before the Board.

14 This site is probably the most restricted site  
15 and most regulated site acreage-wise that I've ever  
16 run across in 23 years of doing business in the  
17 state of Florida. A little example of the property  
18 in question is aerial photograph -- I'll pass it  
19 around so you can get a better look -- outlines the  
20 parcel in question. Approximately 80 to 85 percent  
21 of the site over the years has had increasing  
22 wetland regulations.

23 The owner purchased the property in 1971 with  
24 no environmental regulations. At the time he had  
25 full use of the property. The advent of the initial



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1 wetland regulations followed by the adoption of the  
 2 Warren Henderson Act, followed by the adoption of  
 3 the Econ rule which has put approximately 80 to 85  
 4 percent of the property regulated from any use.

5 The owner is not a commercial developer. He's  
 6 not trying to be a commercial developer. He's been  
 7 trying to sell this property for the last five years  
 8 that I know about. The only way we can make this a  
 9 viable piece of land that he can put on the market  
 10 and sell is to try and reclaim a portion of his  
 11 property out of the wetlands.

12 The portion of the property that we're trying  
 13 to reclaim is an area that lies north of an existing  
 14 powerline easement between Highway 50 and the  
 15 powerline easement. If you take a look on the  
 16 ecosystems the whole system out here has been  
 17 fractured. We have Highway 50 cuts it and we have  
 18 the extension of the East-West expressway cuts it  
 19 and we have a powerline cut through it. We've got a  
 20 25-foot wide canal going through it, a 10 by 10 box  
 21 culvert dumping water down the ditch on the west  
 22 side of the property. This whole area has been  
 23 extremely fractured over the years.

24 The advent of the additional regulations have  
 25 made any use of this property outside of the funded

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1 wetlands absolutely impossible. The only hope this  
2 property owner has is to try and reclaim a portion  
3 of the property to do that we've instigated the  
4 dredge and fill permit application to raise a  
5 portion of this land above the -- several feet above  
6 existing ground to pull it out of the high ground  
7 water table that constitutes and supports the  
8 wetland vegetation that's on-site. This area is a  
9 100 percent out of 100. Your flood plain that we're  
10 dealing with says there's not a flood plain issued  
11 involved in our proposal.

12 Again, we have approved developments called  
13 University Meadows and Huckleberry that both south  
14 and west property lines that again fracture the  
15 ecosystem. So let me go ahead and pass this around  
16 where you can take a little closer look at what  
17 we're talking about, and please pay a little  
18 attention to how fractured that ecosystem is that  
19 we're dealing with.

20 We have a another chart that basically shows  
21 the upland portions of the site which are in the  
22 orange and green similar to the exhibit that you had  
23 up there. The cross-hatched area we have in here is  
24 an existing powerline that's mowed once or twice a  
25 month so that vegetations been eliminated. We have

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a large ditch along the west property line. We've had increased runoff from the north, from the south, from the east that has all affected and damaged this property.

Again, the remaining lands that we in 1971 had 100 percent usable property, now basically this is the only thing that he can get to without building a quarter of a million dollar crossing of the wetland to get to approximately one acre he has in the corner.

He's been effectively right now regulated out of any use of his property. He's come back and said, okay, what can we do? Our first attempt is to try and reclaim all the land above the 100-year flood plain north of a natural slough that runs through this location.

After preliminary meetings with the water management district, we agreed to move to minimize the impact. We pulled it north of the powerline that basically cuts this ecosystem and isolates this area already. In order to mitigate this damage, the owner has agreed to dedicate a conservation easement over 11 and a half acres of the remaining piece of his property. Mitigation scheme would take forever any development potential off the bulk of this

1 property in order to gain some rights to develop the  
2 front portion of this property that's adjacent to a  
3 frontage road that was built as part of the  
4 East-West Expressway construction.

5 The staff is basically recommending denial of  
6 this for three reasons. One, it's a refusal by the  
7 owner to reduce wetland impacts or to increase  
8 offered mitigation. How much do you want? He's  
9 giving up approximately two-thirds of this property  
10 and the most environmentally sensitive portions of  
11 this property to mitigate 3.4. That's a almost four  
12 to one mitigation ratio that he's offered in this  
13 application.

14 He's not -- he's an elderly gentleman. He  
15 needs to sell the property, and we're trying to get  
16 enough that he can reclaim his investment in this  
17 property. This is as close to a complete regulatory  
18 taking case as I've ever seen. And the mitigation  
19 that he's given is phenomenal. He's given up  
20 two-thirds of his land in order to reclaim a  
21 fractured distressed wetland system, but the State  
22 says two-thirds of your property's not enough, so  
23 you have to go off-site with 50 acres of additional  
24 enhancement. That's ludicrous folks. That's almost  
25 a 15 to 20 mitigation ratio that the State's looking

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1 for distressed fractured system.

2 The second one was adverse impact to wetlands  
3 habitat. Folks, this site has no wetland habitat at  
4 all, has no benefit. It's fractured. It's cut.  
5 It's surrounded by pavement and it's surrounded by  
6 proposed and permitted development. There are no  
7 wildlife benefits on this site. And how the staff  
8 can say that we're damaging wildlife benefits with  
9 what's already gone in this area is beyond my  
10 comprehension.

11 The third one is we haven't provided reasonable  
12 assurances the project would not create a cumulative  
13 impact. Again, your cumulative impact criteria is  
14 relatively new. I don't understand it 100 percent.  
15 But if somebody's willing to preserve two-thirds of  
16 their site and perpetuate it forever to be allowed  
17 to try to reclaim the property, we thought was an  
18 absolute excellent proposal and should have been  
19 reviewed and accepted by the staff.

20 We don't agree with your staff's environmental  
21 evaluation on the wildlife habitat potential at the  
22 site. We don't agree with their request for  
23 additional mitigation in order to be permitted.

24 We've had a client that's owned the property  
25 for 23 years, been damaged for years. Every

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1 regulation that's been adopted has taken another  
2 piece of his property and another piece of his  
3 development rights. It's gotten to the point that  
4 you've taken it all, and this is basically his last  
5 attempt to try and work within the system in order  
6 to reclaim a portion of his property and reclaim his  
7 investment in his land. Any questions?

8 MR. SEGAL: I'm somewhat familiar with that  
9 piece of property to the north of it abiding Highway  
10 50. Isn't that area fenced off? Like, didn't the  
11 DOT kind of extend the fence there from an off ramp  
12 of the expressway?

13 MR. FOGLE: A portion of it's fenced, most of  
14 it's not. The road immediately north is Bonneville  
15 Drive and the development immediately north is the  
16 research park. A portion of the limited access  
17 right-of-way is fenced.

18 MR. SEGAL: Is this kind of a window to Highway  
19 50?

20 MR. FOGLE: Absolutely. The frontage road has  
21 been constructed to the intersection of Bonneville  
22 Drive. When the DOT bought limited access  
23 right-of-way, they cut off its frontage and they had  
24 to build an access road or frontage road to give  
25 this property and the property over here access to

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1 Highway 50 or they would have had to buy the  
2 property back then.

3 MR. SEGAL: But he was somewhat compensated for  
4 that loss?

5 MR. FOGLE: Of course, but not for the entire  
6 piece of property obviously.

7 MR. HILL: What's the condition of the wetlands  
8 that you plan to give to the conservation easement?  
9 Is it just another distressed wetland also?

10 MR. FOGLE: Again, if you take a look at that  
11 area, you will find a strip of wetlands that follows  
12 the creek line. It's a little bit more  
13 distinguishable maybe on this area.

14 MR. HILL: You talking about here or over here?

15 MR. FOGLE: If you can take a look, you can see  
16 a strand of vegetation comes through here. That is  
17 your classic wetlands. Everything above that or  
18 beyond that is a mixed bag of upland and wetland  
19 vegetation. What you need to preserve from a  
20 wetland standpoint is this strand. We're not  
21 proposing to take that.

22 The rest of the wetlands, especially this stuff  
23 north of that powerline is extremely distressed,  
24 limited habitat value. We've been in disagreement  
25 with staff on the -- almost from the getgo on the

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1 value of this for wildlife and fish. We don't see  
2 it. My environmentalist, Jim Morgan of Morgan  
3 Environmental, done extensive reviews on-site and  
4 basically sees no current benefit to fish or  
5 wildlife on this property at all.

6 MR. HUGHES: I think basically you're  
7 challenging staff's findings of fact.

8 MR. FOGLE: Absolutely.

9 MR. HUGHES: Now, do you have material today to  
10 support your verbal allegations --

11 MR. FOGLE: Sure. We've submitted enough  
12 environmental reports in our application to support  
13 our position. Again, when you take a look at your  
14 rules, there are no rules, there are specific facts  
15 involved with what is a cumulative impact we've  
16 seen, what is a viable wetland habitat. Those  
17 things are mostly what is your opinion of that  
18 matter. I've got opinions both my own and our  
19 environmentalist that it's not a good habitat. We  
20 have opinions on the water management district that  
21 they are. There is nothing that says, hey, it's  
22 number two class wetland with this kind of species  
23 and it classifies it as good or bad. It's a  
24 subjective matter that we're looking at.

25 MR. HUGHES: Well, I believe we're talking



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1 about objective things here when we're talking about  
2 wetlands, mitigation and so forth. Now, you've  
3 presented to our staff people your findings from  
4 your environmental people and they reviewed these;  
5 this is what you're saying?

6 MR. FOGLE: Absolutely.

7 MR. HUGHES: They disagreed with the factual  
8 information that you gave our staff people --

9 MR. FOGLE: Sure.

10 MR. HUGHES: -- is that where we are?

11 MR. FOGLE: Again, it comes down to a  
12 difference of opinion on the quality of that  
13 wetland. Again, I'm trying to demonstrate in  
14 relatively simple terms that I've got an expressway  
15 on this side, a major road on this side, a powerline  
16 cutting through here, two developments on two sides  
17 of me, and what you've got is a narrow band of  
18 wetlands surrounded by development. And I'm being  
19 told that that's a significant wildlife habitat  
20 benefit and that my construction of 3.4 acres of  
21 fill on the north part of my property north of the  
22 powerline is going to do damage to the wildlife.  
23 Our expert said no way. There are no wildlife  
24 benefits to begin with, let alone loose on this  
25 property.

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1 MS. HARDEN: Can we hear staff's response,  
2 please?

3 MR. ELLEDGE: The staff report spells out  
4 wildlife benefits that we see in the wetlands. The  
5 staff considers these wetlands to be a high quality  
6 wetlands and uplands in the Riparian Habitat  
7 Protection Zone of the Econ, which again impact in  
8 these areas are presumed to be harmful, unless the  
9 applicant demonstrates -- demonstrates otherwise,  
10 it's presumed to be harmful to the fish and  
11 wildlife.

12 The -- not only -- I also wanted to point out  
13 this powerline itself is not the type of powerline  
14 where you have a road underneath it. That powerline  
15 has actually a herbaceous wetland system underneath  
16 the powerline. It's not a forested wetland that's  
17 been cleared obviously, but it still is a wetland  
18 herbaceous system in that area.

19 As to what the applicant consultant submitted,  
20 Liz, did their consultant submit information that  
21 there is no habitat value at all to this wetland  
22 system? Did you get any such report, any surveys or  
23 other information that demonstrated that? What did  
24 you do get?

25 MS. JOHNSON: They did submit a wildlife survey

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1 of the area and there were a variety of birds and  
2 other different types of wildlife using the area  
3 that was surveyed and they surveyed the whole site.

4 MR. ELLEDGE: So I think it's safe to say  
5 there's a disagreement regarding the quality of the  
6 wetland system. The staff believes that this system  
7 is of high quality. I think there's also a  
8 disagreement as to whether or not we have totally  
9 prevented the use of this property. As I indicated  
10 earlier, development of up to an acre of this  
11 property could be mitigated on-site and development  
12 of 3.7 acres as proposed could be -- could be  
13 accomplished if off-site mitigation were also  
14 included in the mitigation plan.

15 MR. FOGLE: Again, you do have a significant  
16 mitigation plan already included in this proposal.  
17 The man's given 11 and a half acres of wetlands  
18 preserved from development. That is -- I don't know  
19 whether staff agrees with it or not, but that is a  
20 tremendous financial benefit to the State,  
21 preservation of the ecosystem to how much can you  
22 do.

23 We've taken a look at the economics of this  
24 situation. The owner paid top dollar for this  
25 property back in 1971. He's held it for years, and

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1 he's had 80 percent of his property regulated away  
2 today and he has to come before a board and say,  
3 look, I want to reclaim 3.4 acres of my property so  
4 I can get my economic benefit back out of that  
5 property. And we're looking at a system. All you  
6 got to do is look at the aerial photographs, see the  
7 road systems, powerlines and developments that have  
8 been proposed here, and to say that it's a viable  
9 wildlife system is ridiculous. I don't know care  
10 what expert looks at it, what staff reported.

11 We've got a severe disagreement on intent with  
12 staff's evaluation on this track. And again, we  
13 understand that we have to do mitigation, but my  
14 God, how much more do you folks want? The owner has  
15 taken this thing out, but he can't -- can't afford  
16 to go off-site to mitigate anything else. It's  
17 expensive enough for him to reclaim under dredge and  
18 fill permit the 3.4 acres, and if he does get that  
19 and he gets commercial values at today's rate, he's  
20 barely out of that recouping his initial investment.

21 MS. HARDEN: As I understand this, your client  
22 doesn't want to build anything, he just wants to  
23 clear it and fill it to make it saleable; that's  
24 what you're saying?

25 MR. FOGLE: The only way he can sell that

1 property is to get around the wetland regulations.  
2 The easiest way we found to do that is to get a  
3 dredge and fill permit issued. He has no intent to  
4 sell it to do a commercial development. It is  
5 commercially zoned property, and hopefully he will  
6 sell it to somebody who will do a commercial  
7 development on the 3.4 acres. But he himself is  
8 just trying to sell the property, has been for five  
9 years, been unsuccessful because of the wetland  
10 impacts and regulations that have been placed on  
11 this property.

12 MR. HILL: What kind of development do you  
13 think might go in there? What's that zoned for?

14 MR. FOGLE: It's a commercial zone. It's on 50  
15 at an intersection, at a major interstate highway,  
16 7-11, McDonald's, you know, Jiffy Lube, a little  
17 strip center, there's a lot of possibilities.

18 MR. HILL: Isn't there a junkyard right down  
19 the road or maybe it's a parts place?

20 MR. FOGLE: No, sir.

21 MR. HILL: I laid a 42-inch pipeline under that  
22 string you're talking about one time years ago  
23 before they had the expressway.

24 MR. FOGLE: They just designed a 120-foot  
25 bridge to go over the adjacent piece of property, so

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1 times they are changing.

2 MR. HUGHES: We're not in the economic  
3 business. We're considering this environmentally  
4 and scientifically, but I'm just curious when you  
5 bought it back in 1971, what was the zone?

6 MR. FOGLE: What was the zone in '71?

7 MR. KOONTZ: Same zoning.

8 MR. FOGLE: Same zoning, commercial-in the  
9 front and R2 in the back.

10 MS. HARDEN: Ms. Prescod's been waiting.

11 MS. PRESCOD: On that map that you have, yeah,  
12 of the yellow and green portion that you want to  
13 develop up there, what is the size of that?

14 MR. FOGLE: This is .42 acres of upland of  
15 which that includes the Riparian setback zone that's  
16 adopted with the Econ rule and we have 3.13 acres of  
17 the wetland, defined wetland, of which about an acre  
18 of that is already a cleared, mowed powerline  
19 easement, totally stripped of vegetation.

20 MS. PRESCOD: And staff proposed a dry bottom  
21 retention in there and I understand your people  
22 rejected it. Could you give me some idea of why?

23 MR. FOGLE: This is a dry bottom retention pond  
24 in the powerline easement as shown. One of the  
25 staff's recommendations that we got at 5:30 Monday

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1 night was the only time that we seen staff's  
2 recommendation for off-site mitigation, was to --  
3 well, eliminate this and put some underground  
4 storage up site.

5 Those underground infiltration systems for this  
6 kind of site development probably would run to the  
7 tune of about 180, \$200,000, not economically  
8 feasible for a tract this small with land at this  
9 base price. And again what we're proposing was to  
10 use already cleared, massively disturbed areas in  
11 here for storing water retention. And it is a dry  
12 pond that is designed, very shallow storage  
13 departments.

14 MR. HILL: If you just got this information at  
15 5:00 on Monday, would you be willing to go back with  
16 the staff over the next month and renegotiate this  
17 thing and try to come up with --

18 MR. FOGLE: I've discussed that with the owner.  
19 Basically what we think we presented is more than an  
20 adequate mitigation plan. The owner is not  
21 interested in looking to do any additional off-site  
22 mitigation to try and resolve this. He's given up  
23 two-thirds of his property.

24 MR. HILL: Well, I just asked a question.

25 MR. FOGLE: And he's given up the best and most

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1 significant wetlands on that property for  
 2 preservation from here on out. The mitigation  
 3 ratios that staff are asking for dealing with what  
 4 we consider reclaiming here are excessive in our  
 5 argument.

6 MR. HILL: But you prefer to have this permit  
 7 turned down than to try for 30 more days?

8 MR. FOGLE: Again, my client has undergone  
 9 bypass surgery. He needs to get out of town to rest  
 10 and recuperate, and hopefully would like to resolve  
 11 this matter with the board today.

12 MR. HUGHES: I have another. Would you say  
 13 that -- this was taken in 1990, this photograph. It  
 14 shows a ground-covering vegetation and trees and so  
 15 forth in 1990. Since that time you're alleging --  
 16 and I haven't been on the site, but you're stating  
 17 that these trees have been stripped and no longer in  
 18 the condition this photograph shows; is that  
 19 correct?

20 MR. FOGLE: If you take a look at the powerline  
 21 easement, it bisects the site that has been  
 22 stripped. It has been stripped for a number of  
 23 years. The rest of the site has been natural  
 24 vegetation since 1971.

25 MR. HUGHES: In other words, the site is still



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1 in the condition that the photograph here showed, I  
2 mean?

3 MR. FOGLE: Yes, sir.

4 MR. HUGHES: Well, there's considerable tree  
5 cover apparently from looking at this, and you're  
6 stating it's stripped?

7 MR. FOGLE: I'm stating that the powerline that  
8 runs through the center of the site a hundred feet  
9 in width has been stripped of all the vegetation and  
10 is basically mowed grass and mowed wetland  
11 vegetation.

12 MR. HUGHES: Well, that's a very minor part of  
13 it, would you say?

14 MR. FOGLE: Again, what we're trying to reclaim  
15 is a minor portion of it north of that powerline,  
16 totally isolated from the rest of the wetland  
17 system.

18 MS. PRESCOD: I think my colleague is speaking  
19 about the apartments and so on that you mentioned --

20 MR. FOGLE: Again, Huckleberry development  
21 approved to the south, they are proceeding with the  
22 development. They have approved the conceptual  
23 search, the water permit's issued. And the adjacent  
24 development, University Meadows is a permitted  
25 development up through phase one construction that

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1 has not started yet, but it is permitted and is  
2 anticipated.

3 MS. HARDEN: Mr. Segal.

4 MR. SEGAL: Yeah. I'm sensitive to your  
5 client's loss that he has suffered due to increasing  
6 regulatory pressure since 1971. I've had a similar  
7 problem, and it's no fun, but that's the facts of  
8 life. And I keep hearing you suggest that he's  
9 already giving up two-thirds of his property in the  
10 back as mitigation, but apparently what I'm hearing  
11 the staff say he's already lost that due to  
12 regulation, and I just want to clarify that one  
13 thing.

14 MR. FOGLE: I'd love you to put that same  
15 statement to the court reporter. I'd love it. He's  
16 lost it to regulation, by God, the State should  
17 compensate him for it.

18 MR. HILL: My point -- I don't want to cut it  
19 short. They don't want to wait 30 days to try to  
20 work it out, go over and get a bulldozer, fill up a  
21 few ditches as mitigation off-site. They want to go  
22 to court. If he got a lawyer, they ought to get  
23 him, get on with it. I move the staff  
24 recommendation.

25 MR. HUGHES: I second the motion. I second the

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motion.

MS. HARDEN: Motion's been moved and seconded.  
Is there any further board discussion?

MR. SEGAL: It doesn't appear that the mitigation of the staff is asking for what amounts to too much -- too much money in view of --

MR. FOGLE: Well, how about having your staff tell us? I mean, there's nothing we'd like today than to get 3.4 acres, keep this thing out of court and go our happy ways, let our owner recoup his investment, sell his property.

I've done probably as much enhancement mitigation permitting through the district. Our costs are typically around \$20,000 an acre for enhancement on the four or five projects I've worked on. I have no idea what the staff's filling a couple of ditches in, but I've never worked on one that's been that simple. You ask your staff what the cost? They don't have an idea. My owner spent -- is willing to give up a million dollars' worth of potentially commercial property for mitigation. It's phenomenal and it's not enough.

MS. HARDEN: Thank you.

MR. HUGHES: Let me ask him one last question from me. We've gone over the same thing over and

1 over again. We're asking the same questions.  
2 You're giving the same answers, presenting the same  
3 information. Do you have anything new to present?

4 MR. FOGLE: No.

5 MR. HUGHES: I'd like to hear anything new you  
6 got, otherwise I'm ready to vote.

7 MR. FOGLE: Fine.

8 MR. HILL: I'm going to ask you one more time.  
9 Would you prefer this permit be turned down; is that  
10 what you want or would you like to work for 30 days  
11 and try to work it out and see if these minimum  
12 costs they're talking about, see if you can afford  
13 that?

14 MR. FOGLE: I've got specific instructions from  
15 my client that the offer is as good as it can get.  
16 It's an excellent offer, an excellent mitigation  
17 plan to reclaim the preserved areas. We were hoping  
18 that we would get at least some consideration, not  
19 just saying, hey, we own it already, go out and do  
20 something else in order to get a permit.

21 Understand that this mitigation plan is a  
22 substantial benefit to the State with substantial  
23 preservation of a significant portion of wetlands  
24 for the State, and to throw it off and say now go do  
25 something else is pushing the envelope.

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1 MS. HARDEN: Thank you. Is there --

2 MR. ELLEDGE: I -- Madam Chairman, I wanted to  
3 make a comment for the record before the vote in  
4 response to some of the comments made by Mr. Fogle.  
5 This application, the dredge and fill application,  
6 you're required to take action on that today because  
7 the applicant invoked a rule provision which allows  
8 them to declare the application complete--essentially  
9 to require action without considering any --  
10 providing anymore information. So they have  
11 basically forced us to take action today, and as  
12 part of our responsibility in reviewing these  
13 permits, we have provided them with options and  
14 alternatives.

15 Based on the time that we've had, some of these  
16 proposals were made recently, as Monday perhaps,  
17 although I felt we had actually called and given  
18 some of these last week. Oh, that's right. You  
19 were out of town last week, but it was early this  
20 week we provided them with some of these  
21 alternatives.

22 They are required by the dredge and fill rule  
23 to provide written responses to whether or not those  
24 alternatives are practicable. It's therefore their  
25 responsibility to make this analysis on whether or

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1 not they have a practicable alternative. We believe  
2 that their practicable plugging the ditches or  
3 they're putting culverts in in rows on this other  
4 parcel would be very economical approaches towards  
5 mitigation.

6 The other thing I wanted to state is that we do  
7 not believe that the mitigation has been proposed by  
8 the applicant is acceptable. We don't believe that  
9 it fulfills the requirements of the rule.

10 Essentially it allows the loss of one acre of  
11 wetland for the preservation of three, a three to  
12 one ratio. If you did that on every parcel of  
13 property that was proposed for development the state  
14 would lose 25 percent of its wetlands and that would  
15 be an unacceptable cumulative loss of wetlands.

16 MR. FOGLE: Again --

17 MS. HARDEN: Excuse me. You're out of order,  
18 sir.

19 MR. ELLEDGE: Excuse me, sir. Especially since  
20 we've already lost half of the wetlands of this  
21 state to development of one type or another. So  
22 that was the basis for our recommendation. I did  
23 want to make a couple explanatory comments based on  
24 comments that have been made. If there are any  
25 other questions, we'll be happy to answer them.

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MS. HARDEN: Are there any other questions?

All in favor of the motion?

(All board members responded by saying "aye.")

MS. HARDEN: Opposed? Motion carried.

(End of proceedings)

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C E R T I F I C A T E

STATE OF FLORIDA )

COUNTY OF PUTNAM )

I hereby certify that the following pages constitute a true and correct transcript of my Stenotype notes taken at the time and place hereinabove stated.

\_\_\_\_\_  
Mary K. Shotts, RPR  
Deputy Official Court Reporter