

## JULY 18, 1996 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC) of Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, July 18, 1996, at 10:00 a.m., in the Boardroom, County Center, Tampa, Florida.

The following members were present: Chairman Dottie Berger and Commissioners Phyllis Busansky (arrived at 10:14 a.m.), Joe Chillura, Chris Hart (arrived at 10:24 a.m.), Jim Norman, Ed Turanchik (arrived at 10:13 a.m.), and Sandra Wilson.

Chairman Berger called the meeting to order at 10:05 a.m. Commissioner Wilson gave the invocation following the pledge of allegiance to the flag.

Mr. Roger Stewart, Executive Director, Environmental Protection Commission, added off-the-agenda items as follows: 1) a settlement agreement worked out between the County Attorney, EPC Counsel, and a third party; 2) authority to sign and approve a Department of Environmental Protection (DEP) contract; and 3) an item of interest regarding an open house and deployment of the Ocean Survey Vessel (OSV) Peter W. Anderson by the Environmental Protection Agency (EPA) in the participation of EPC and National Estuary Program (NEP) in a study of Tampa Bay.

**Commissioner Chillura moved the consent agenda, which was seconded by Commissioner Wilson, and carried four to zero.** (Commissioners Busansky, Hart, and Turanchik had not arrived.)

### CONSENT AGENDA

- Report of the Executive Director:
- Acceptance of Monthly Activity Reports
- Legal Department Monthly Reports
- Acceptance of Contributions to Pollution Recovery Fund
- Analysis of Gardinier Settlement Fund

### DEPLOYMENT OF OSV ANDERSON BY EPA

Mr. Stewart explained the NEP had developed an interest in aerial deposition into water pollutants. Mr. Tony D'Aquila, Air Management Division, talked about the involvement between the EPC and NEP to study the impacts of atmospheric deposition of nitrogen in Tampa Bay waters. NEP had wanted the EPA to bring a research vessel to the area and monitor the deposition on the water. For about 1.5 years, a similar type sampling station would be run by EPC at the ambient monitoring station on Gandy Boulevard. A monitor would be used to measure atmospheric deposition for ozone and sulfur dioxide, while the OSV Anderson sampled for ammonia. An open house would be held July 25, 1996, 12:00 p.m. to 4:00 p.m., for the vessel, which was moored at the Florida Aquarium.

### CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Mr. Russ Thomas, Suite 2600, One Tampa City Center, chairman, CEAC, reported that the Martin Brothers request for Pollution Recovery Funds (PRF) had been considered. CEAC unanimously voted to recommend that funds not be allocated for fencing, cleanup, or any portion of the PRF request. Safety issues were recognized and were important concerns, but after looking at the PRF and its stated purpose, the consensus was that the expenditures would not be appropriate. EPC Counsel Sara Fotopulos had distributed a copy of the PRF application and staff analysis.

Mr. Thomas also reported that CEAC addressed Wetlands Rule 1-11 on July 15 and held the second public hearing. Mr. Darrell Howton, Director, Wetlands Management, and Attorney Fotopulos had provided the recommended amendments to the rule. Since then, one CEAC member had also provided other recommended amendments to the rule. Another public hearing was scheduled in August to review the proposed amendments,

## THURSDAY, JULY 18, 1996 - DRAFT MINUTES

and anyone wishing to propose amendments to the rule could do so. A motion had been made to approve an amendment to the rule, Section 1-11.07(4), circulated on April 19, 1996, which would give EPC discretion to defer certain jurisdictions to other agencies--the DEP or the Southwest Florida Water Management District (SWFWMD)--in unique circumstances. Much debate had involved the existence of several groups looking at wetlands and how ecosystems were managed. The motion had failed five to nine. CEAC preferred to see what the recommendations would be from all the groups reviewing wetlands and ecosystems about how the wetlands should be managed and who should have jurisdiction.

Commissioner Berger thanked Mr. Thomas for the work done by him and the committee regarding the rule changes and having public input.

### COMMISSIONERS' REQUESTS

#### Modifications to Tree Ordinance

Commissioner Chillura recalled that County and EPC staffs had been asked to look at the possibility of amending the tree ordinance to reflect damages done to cypress heads from drawdown and whether that could be incorporated into the Land Development Code (LDC). Attorney Fotopulos had drafted language that the County Attorney had not yet reviewed at the Board of County Commissioners (BOCC) level. Commissioner Chillura asked that Attorney Fotopulos review the language and that EPC send the language to the BOCC and its legal staff to determine if amending the LDC to protect endangered trees in the wetland areas would be appropriate.

Attorney Fotopulos said the County Attorney's Office interpreted the ordinance as not covering any impact to trees occurring from drawdown, because it was an indirect cause relationship. A definition for tree removal was specifically covered by the ordinance; the words proposed by Attorney Fotopulos would expand that definition to allow for circumstances where the soils around a tree subsided because of dewatering or pumping in the area. Attorney Fotopulos suggested that the language be sent to the County Attorney's Office for review. Commissioner Turanchik asked if damage to wetlands in Hillsborough County caused by drawdowns was actionable by EPC. Attorney Fotopulos responded affirmatively and explained the difficulty was proving causation.

Commissioner Turanchik said 12 experts from Pinellas County had admitted that wellfield pumping damaged wetlands. He asked Attorney Fotopulos to look again at the issue to see if action could still be taken if impacts were pursuant to a valid permit, and, if so, who would action be taken against--the Water Management District, the people causing the impact, or both.

**Commissioner Chillura moved to transmit the suggested language on the memo of Attorney Fotopulos, dated July 17, to the County Attorney with copies to Mr. Gene Boles, Director, Planning and Growth Management, and County Administrator Daniel A. Kleman and to ask for a response. The motion, which was seconded by Commissioner Norman, carried six to zero. (Commissioner Hart had not arrived.)**

#### Lozano Building

Commissioner Chillura said that acquisition in lieu of leasing had been looked at over the years. The owner of the Lozano Building had been interested in selling the building to the County. A recent draft audit recommended that all the functions of EPC be under one roof. A historical building and a landmark in Ybor City, the building needed minimal restoration and should be in public ownership. Commissioner Chillura suggested looking at alternatives and looking at the Lozano Building in terms of what the County was paying for lease plus maintenance and comparing that to the debt service. Chairman Berger suggested delaying the item until the BOCC had its workshop on the audit.

Commissioner Chillura wanted staff to provide numbers that would look at the cost of acquisition of land in that

THURSDAY, JULY 18, 1996 - DRAFT MINUTES

district or area and the cost of a new building, to make a comparison between the existing building and the Lozano Building in terms of collapsing leases, and to look at the total debt coverage; it would be helpful if that information was available for the workshop. Chairman Berger was not sure Ybor City was the proper location for EPC. **Commissioner Chillura moved for staff to be prepared to discuss the existing building, with the comparison of owning and/or leasing the Lozano Building as one option; the second option was to do what the auditor said should be considered, which might not be affordable. The motion, which was seconded by Commissioner Norman, carried seven to zero.**

Martin Brothers Update

Attorney William Humphries III, 442 West Kennedy, represented Patricia and Bobby Martin, and presented an update on information requested at the EPC meeting of June 13. During the first half of 1988, when most of the destruction took place, Hillsborough County was aware of the violations that occurred and took no action to prohibit the actions of KBH, the contractor. So much destruction would not have occurred if action had been taken.

Commissioner Turanchik interjected and advised Attorney Humphries that he had received an opinion, late on June 17, from the County Attorney that the County was not responsible--it would be illegal for Hillsborough County government to spend money to remediate the problem. Copies of the opinion were provided to members, and Commissioner Turanchik suggested Attorney Humphries read the opinion.

Commissioner Norman said the opinion also stated that the County Commission determined a public purpose and, if a public purpose was determined, Article 7 would not be violated. A public purpose would be an existing safety problem that put citizens at risk. Commissioner Norman moved for a ten minute recess; instead, Chairman Berger suggested continuing the item to the end of the meeting. **Commissioner Norman moved to continue the item.** Attorney Humphries did not feel a recess was needed; the purpose was to discuss whether Hillsborough County was responsible, either for technical reasons or for safety reasons; in his opinion, Hillsborough County clearly had the responsibility, the right, and the power to issue funds.

After he recommended that Attorney Humphries read and interpret the opinion and return to work through the issue, **Commissioner Norman moved that the item be last on the agenda.** Commissioner Chillura pointed out that Attorney Humphries was before the EPC and that the opinion had gone to Commissioner Turanchik as County Commissioner; Attorney Humphries was present to discuss any interest in PRF, which the EPC could approve in its dealing with regulatory environmental issues, the PRF, and the Guardian Aide Trust Account. The EPC was getting into a discussion of what was dealt with at the BOCC level. **Commissioner Hart seconded the motion, which carried seven to zero.**

DEP CONTRACT

Mr. Stewart said the off-the-agenda item was an amendment to a contract with DEP that provided monies to EPC for services rendered. Some additional services had already been rendered, and DEP was reimbursing EPC for those services. Mr. Stewart requested approval to sign and accept the amendment to the existing contract. Chairman Berger said the contract would be extended approximately \$2,800. **Commissioner Busansky moved approval, which was seconded by Commissioner Wilson, and carried seven to zero.**

Chairman Berger welcomed Pasco County Commission chairman, Ed Collins, who, for his fellow commissioners, thanked the BOCC of Hillsborough County for its courageous efforts in trying to resolve the "water wars"; courage was required to change the status quo. Chairman Berger thanked Mr. Collins for Pasco County's support of Hillsborough County.

## THURSDAY, JULY 18, 1996 - DRAFT MINUTES

### CITIZENS WISHING TO APPEAR

To bring everyone up-to-date, Chairman Berger said the Hachems, who owned a 40-unit trailer park in Riverview, had been issued a consent order. No enforcement action had been taken to date; the consent order had not been signed, and the Hachems wanted the EPC to hear their concerns. The County was also involved in the issue because of a potential drainage problem; representatives were present.

Ms. Laurice Hachem represented Riverlawn Mobile Home Park in Riverview. She explained the park had a wastewater treatment plant to service about 45 homes and septic systems for other homes. Ms. Hachem gave a history of the effluent problem. Everyone believed the pond was not perking properly; therefore, the water should be pumped from the pond and the sludge cleaned from the bottom of the pond. Riverlawn Park moved forward with the pumping. When all the pumping had been done, EPC staff took photos of the pond and ditch and commented that the pond could not be leaching into the ditch on Stoner Road because the ditch was full of water and the pond was empty. Riverlawn Park had an engineer evaluate the situation. Stormwater runoff from the Alafia River basin area was determined to be the cause of the problem. The runoff filled the pond and created high levels. Riverlawn Park said that its pond was not leaching and was not in violation. A neighbor compounded the problem by filling his ditch with four feet of dirt because a washer belonging to a park resident was dumping soapy water in his ditch. EPC had conducted no tests and had no proof that the pond was leaching. A lab test result on water the Riverlawn Park had taken from the ditch was the only evidence anyone had presented.

Chairman Berger asked if EPC had looked at the analysis of the water. Ms. Hachem replied the report was faxed to EPC; the only test done by EPC was in October 1994 when an emergency overflow device--designed in 1970 before the EPC and regulations--was in the pond. Chairman Berger asked if EPC had taken action against the property owner who had blocked the drainage. Mr. Stewart replied in the affirmative--he later clarified that EPC had not taken action; neither EPC nor staff agreed with some representations made. EPC had attempted to work with the Hachems in every way possible and recognized that the system had certain deficiencies. Contrary to accepted standards, the "overflow" was an illegal top-off that enabled the pond to never overflow as the excess went through a pipe and into the ditch. Relative merits of the tests taken from the ditch had no bearing.

Mr. Les Eighmey, Director, Roadway and Maintenance Division, reported the problem had been identified and a plan made to remedy the problem. Permission was applied for and received from EPC to do the hand removal necessary to clean some portion of the ditch. A problem remained with the "illegal" fill, which essentially caused the stormwater problem. Mr. Eighmey explained the ditch was on private property and a right-of-entry permit was denied by the property owner. Prescriptive rights would be pursued over the ditch since stormwater had apparently dumped into the ditch for many years as direct outfall to the river. Eminent domain action would be pursued, if necessary. Responding to a question, Attorney Fotopulos said the issue would be whether the ditch was from County water, and, if so, the EPC could take jurisdiction over and prevent such action as filling.

Mr. Robert Upcavage, Environmental Supervisor, EPC, said the outfall occurred from a high elevation drop. The previous owner of the south property allegedly deposited ten cubic yards of fill in the ditch that was alleged to be from illegal pumping from the perk pond into the County stormwater ditch, which ultimately ran into the ditch in question. Illegal pumping was not specifically from the washing machine. A staff scientist investigated and incorrectly determined that it was not State waters, which was about the time that EPC adopted the State methodology for identification of wetlands and State waters. The ditch was incorrectly identified as a drainage ditch. Enforcement was deferred to the County through the Planning and Development Management Department that had officials look at and, subsequently, remove the fill plug. The issue arose again in early 1996 from a wetland perspective. Mr. Upcavage and a staff member looked at the area and determined that it was a jurisdictional wetland, but a review of the soils was consistent with a ten cubic yard plug being dropped in. It was the opinion of Mr. Upcavage that the soil was substantially removed; most of the fills associated with the 300-foot length would probably be associated with water-borne sediments and silt carried down-slope from the development

THURSDAY, JULY 18, 1996 - DRAFT MINUTES

uphill. The site could be further investigated. The current property owner felt he should be compensated if he were draining County stormwater through his property. Two concerns were as follow: 1) release of liability if any of the trees fell onto the trailer park property because of County work; and 2) compensation for routing stormwater through the property. EPC could accommodate Mr. Thornton as a reduction in property values was associated with wetlands determination, but EPC could not do anything about releasing liability.

Mr. Stewart said the sewage treatment system was deficient; EPC was working in every way to help; the usual fines or penalties had not been imposed, nor had the EPC engaged in hard-nosed enforcement to allow the owners to show the system could work. EPC was not convinced. The allegation of the ditch having any bearing of any consequence was an "allegation." Staff was prepared to debate and refute many statements heard from the appealing party. He recommended that staff continue to work with the applicant; EPC might wish to refer the ditch and drainage matter to the County drainage engineer. Mr. Stewart clarified that no action had been taken against the property owner who had blocked the drainage ditch.

Chairman Berger commented that a consent order had been presented to the Hachems that threatened a \$10,000 fine for each occurrence--\$500 per day. Mr. Stewart disagreed. Chairman Berger suggested that County staff work with the legal departments of EPC and the County to get the ditch flowing; the Hachems had spent more than \$100,000 trying to do what they thought would solve the problem. Mr. Stewart explained that a consent agreement, a mutually agreeable document, had been offered; an offer to delay negotiations for a consent agreement had been made.

**Commissioner Norman moved that County staff and the County legal department work with the EPC legal department to put a moratorium on penalties, fines, and fees that might be placed upon the establishment and return in 30 days to see if all the problems had been solved, instead of taking enforcement action. The motion was seconded by Commissioner Busansky.** Attorney Fotopulos said staff had tried to work with the responsible parties in a situation where staff had felt there was a violation, without going to enforcement. The consent order offered to the Hachems was to resolve the concerns and to keep it from being an enforcement case that would involve penalties. No penalties were asked for in the consent order; a penalty provision stipulated penalties if the Hachems did not do what was agreed in the consent order. Chairman Berger said the item would come back to the EPC next month; meanwhile, the County legal and drainage departments would work out the problem with the EPC legal department. **The motion carried six to zero.** (Commissioner Chillura was out of the room.)

#### LEGAL DEPARTMENT

##### Approve Settlement Agreement (Johnson v. Holmes)

Attorney Fotopulos explained the item would appear on the BOCC agenda, but because the case named both the EPC and BOCC as defendants, the EPC also needed to endorse the issue. Senior Assistant County Attorney Christine M. Beck recommended the settlement as being in the best interests of the County. **Commissioner Busansky moved approval, which was seconded by Commissioner Norman.** Commissioner Hart asked if the County employee had any personal liability in addition to Hillsborough County owning the vehicle. Attorney Beck responded negatively; the employee was within the scope of his employment. The action was against the employer, EPC. Chairman Berger said the item would be before the BOCC on July 31. **The motion carried six to zero.** (Commissioner Chillura was out of the room.)

##### Martin Brothers Update - Resumed

Attorney Humphries had read the opinion. Clearly, the BOCC sitting as the EPC had the right to engage in providing funds for a safety issue through the PRF, to put up the fence as a matter of public safety. A summary of bids submitted was before the EPC.

THURSDAY, JULY 18, 1996 - DRAFT MINUTES

Commissioner Turanchik said the low bid was \$300,000; CEAC recommended that the PRF not be used; the balance of the fund was \$97,000. It would be appropriate for staff to look at the property and decide if what was being discussed compared with what staff felt was the minimum necessary to secure the property. Commissioner Norman suggested the County supply materials to lower costs.

Commissioner Turanchik said an injustice had been done to the Martins. He wanted to authorize, in a separate BOCC meeting, the EPC and the County Attorney's Office to evaluate all options for legal actions that could be initiated against the responsible parties to restore the property to where it should be. The responsible party in the case was Pinellas County government, and there was no question that the Martins had a great wrong done to them.

**Commissioner Busansky moved to pay for the fencing of the Martins' property, the BOCC could look at the County fencing the property and different ways to do it, and to empower County staff and the attorney for the Martins to look at exactly what that would be.** It might be \$295,000 or \$220,000; the BOCC needed to move forward and first ensure, for public safety, that the property was fenced. Commissioner Chillura suggested that EPC recommend to the BOCC and the County Administrator to pursue that course and report back to EPC.

**Commissioner Busansky amended her motion to put the item on the agenda for the next BOCC meeting, which was seconded by Commissioner Hart.** Commissioner Norman wanted those with the expertise to see if \$299,000 could be turned into \$200,000 or whatever, and to see about the possibility of the County supplying the labor. Commissioner Busansky said that was a part of the motion. Chairman Berger opened for public comment.

Mr. Dickie Davis, 10513 Lake Williams Drive, Odessa, talked about responsibilities and injustice; he recommended that Pinellas County pay for the fencing--not the taxpayers of Hillsborough County.

Commissioner Chillura commented that an enormous amount of material was supplied to the County through vendors. When the recommendation was made to the BOCC, Commissioner Chillura suggested that Mr. Kleman be asked to explore the potential of the various vendors, if they were willing, to participate in the venture on a pro bono basis as a one-time issue.

Attorney Meredith Wester, 309 Lake Hobbs Road, Lutz, sat on the Northwest Hillsborough County Basin Board for SWFWMD, was the treasurer of COLA, and an attorney in the Tampa area, addressed the EPC as a citizen currently being sued by Pinellas County. She thanked the Commissioners for support that they gave defendants named in another lawsuit, and their courage in the new lawsuit. Ms. Wester would not be available for the BOCC meeting and encouraged the Commissioners to find the funding to cure an injustice; she did not mind using her tax dollars to fix the injustice that had occurred.

Mr. Stewart had testified that there was no evidence that hazardous material existed on the Martins' property. It was an abomination that someone received a contract to remove hazardous waste from a site that had no hazardous waste and paid for the removal by selling the dirt. Based on the information presented, **Commissioner Hart amended the motion to ask EPC staff to identify the standards that it believed should be met at the site and provide that information to Hillsborough County as the motion on the floor was pursued, in terms of what conditions needed to exist and what the estimated cost would be for that to make it a collaborative effort between EPC and Hillsborough County government.**

Commissioner Turanchik reported that a multi-party agreement had been signed that stated the standard at which the land would be reclaimed. Before that, a bar date hearing was held by the Pinellas County judge to determine if anyone had any claims against Pinellas County. No one showed up for the hearing, and Pinellas County was released from all liability. The allegations were that a Pinellas County judge was improperly influenced by some Pinellas County commissioners and the judge entered biased orders that resulted in the travesty. The EPC lawyers

THURSDAY, JULY 18, 1996 - DRAFT MINUTES

and County Attorney needed to be asked to explore those issues.

Commissioner Hart clarified that his amendment to the motion was not to restore the property to its original condition, but asked what standards the EPC had that would bring the property into compliance now, for safety and other conditions that would have to exist. That was good information that the EPC and the County would need to know. **Commissioner Busansky accepted the amendment.** Chairman Berger commented that a motion was on the floor to refer the item to the next BOCC meeting, July 31, and a time certain was needed. **The motion carried seven to zero.**

**Commissioner Turanchik moved to authorize and direct the EPC attorney to work with the County Attorney, once the County Attorney was so authorized, to look at alternative causes of actions and other proceedings that might be initiated by Hillsborough County or the Environmental Protection Commission to seek justice and remediate the things that had occurred to the Martins. Commissioner Busansky seconded the motion.** Commissioner Norman asked if the motion included potential documents turned over to the State Attorney's Office, to which Commissioner Turanchik replied anything. **The motion carried seven to zero.**

Ms. Gay Townsend, 19905 Long Leaf Drive, Lutz, asked what the CEAC recommendation was regarding the amendments to the wetland rules. Chairman Berger responded. Ms. Townsend supported the EPC and wanted the laws to remain as they were; stronger laws would be better.

Mr. Frank Farrell, 6310 Turtle Creek Boulevard, president, Bellamy Road Homeowners Association, talked about an ongoing problem of a pig farm next to the residential area. After further discussion, Commissioner Norman commented that the land was agriculturally zoned although that use did not exist; homes were built up to agricultural land, which brought two major and different uses together in an area.

Attorney Fotopulos asked if the pig farm had been in operation before March 15, 1982. Mr. Farrell replied negatively and reported the farm had operated less than one year. Attorney Fotopulos wanted to review the matter further. Commissioner Busansky agreed and felt the matter should go to zoning or the BOCC; she suggested mediation be considered. Mr. Farrell thought that Attorney Fotopulos alluded to the Florida Right to Farm Act, Paragraph 5, which stated a farm operation could not be taken to a more intense use that resulted in a nuisance of odor, dust, et cetera when it was next to an existing community. Commissioner Busansky agreed that legal remedies should be looked at, but she pointed out a community remedy--mediation.

Mr. Stewart reported that EPC had interceded by having an agricultural expert look at the farm, which was found to meet all the requirements and was well run. Mr. Farrell replied that the operation had been cleaned up. Commissioner Norman asked that Attorney Fotopulos communicate with him and with Mr. Farrell.

Attorney Merrel Stainton, 225 Danube Avenue, Apartment 4, Davis Island, offered moral support for the Martins. He was the primary attorney from the State Attorney's Office who had investigated the case, but was no longer with that office. Within what the rules of ethics would allow, Attorney Stainton volunteered his services to work with the County Attorney and EPC Counsel.

There being no further business, the meeting was adjourned at 11:50 a.m.

READ AND APPROVED: \_\_\_\_\_

THURSDAY, JULY 18, 1996 - DRAFT MINUTES

CHAIRMAN

ATTEST:  
RICHARD AKE, CLERK

BY: \_\_\_\_\_  
Deputy Clerk

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