

University of Miami
School of Law

OCEAN LAW PROGRAM

COMMUNITY LEGAL PROBLEM SERVICES

Title: Municipal Powers Under Florida Law
with Respect to Protection of
Environmentally Endangered
Riparian Land

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MUNICIPAL POWERS UNDER FLORIDA LAW WITH RESPECT TO
PROTECTION OF ENVIRONMENTALLY ENDANGERED RIPARIAN LAND

On August 27th our assistance was sought by the City Attorney of North Miami concerning proposed use and development of 3 underdeveloped tracts of land fronting on Arch Creek, a short tidal stream debouching into Biscayne Bay.

For purposes of identification these units are generally referred to as the Certain Tract (12 acres), the Gluckstern Tract (5 acres) and the Marguilies Tract (22 acres). It is apparent that they share several interrelated ecological features. They are approximately 6 to 8 feet below the level of surrounding landward property. Moreover, in addition to a measurable degree of shoreline vegetation there is ample evidence that either underground springs or aquifers seep into and contribute to the flow of Arch Creek.

In short, though the 3 parcels are not interconnected they comprise integral segments of an underground eco-system. There is little question that for such lands to be converted to residential use and bring them up to grade with adjacent property would require considerable filling in of shoreline areas. It is claimed by city officials that such drastic alteration would produce irreversible ecological damage.

It should be mentioned that the Certain Tract has been in litigation for over a year, the central issues of which are (1) whether the owner is entitled to a construction permit as authorized by a previous Council, and (2) the allowable number of building units per acre. Though a Circuit Court on Nov. 28, 1972, issued an order to apply zoning criteria to the tract that existed on July 11, 1972, at the time that the permit was issued, the Council itself was disbanded for certain improprieties before any action could be officially taken.

In recent months a referendum submitted to the voters by the newly constituted Council limited building density to 25 units per acre. It is the desire of several members, however, that, if possible, the property in question should be withheld from private development.

But, at least as far as the Certain Tract is concerned, it appears that such hope may not be realized. The Court on Sept. 6, apparently relying on the doctrine of equitable estoppel, ordered the City of North Miami to grant the long delayed construction permit. There is no present disposition by Council members to appeal the ruling. Since nothing short of condemnation by the City or voluntary restraint by the owner will save the 12 acre Certain Tract from substantial change, what then are the available grounds under Florida law for conserving the

other 2 sites?

A review of Florida law reveals the existence of several such grounds. Ch. 403.062 of the Air and Water Pollution Control Act, for example, declares:

"The Department (Pollution Control) and its agents shall have general control and supervision over underground water, lakes, rivers, streams, canals, ditches and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them."

It is difficult to envision the filling in of upland property to the depth of 6 to 8 feet without destroying underground waters and otherwise impairing the fragile character of a stream with which they commingle. This, of course, is a question of factual verification. If not satisfied with the determination of county officials assigned to such task, the municipality is not without administrative and judicial review as set forth in the statute.

Of even greater significance in this respect is a Florida statute (Ch. 167) which confers liberal "home rule" powers upon municipalities. In accordance with Art. VIII, Sec. 2(b) of the state constitution it "enables them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes, except when prohibited by general or special law." (Ch. 167.005)

More specifically, it vests them with authority to deal with ditching or filling in of low lying vacant lands. It states the following:

167.07 Ditching, filling, etc., by municipality.
- If at any time the town or city council of any city or town in this state shall deem it necessary or expedient for the preservation of the public health, or for other good reason connected in any wise with the public welfare or the interests of the city or town and the people thereof, that any lot or lots, block or blocks, or vacant lands lying within the corporate limits of such city or town, which may be lower than any street or streets adjoining the same, or the grade established therefor, or which may be subject to overflow or to the accumulation of pools of water thereon, or which may require to be ditched, drained, filled in, graded or otherwise improved or developed, it is lawful for such city or town council to devise, adopt and carry into effect, continue and complete, either through its corporate officers, or through such agents, trustees or contractors as such council may appoint or select, such plan or plans, scheme or schemes, for the ditching, draining, grading, filling, improving and developing of the lot or lots, block or blocks, or vacant lands aforesaid, as may in their judgment be expedient and necessary for the public interest and the public health, or to continue and complete any scheme or plan heretofore devised and adopted as aforesaid.

From this it would appear that the City of North Miami, if it so elects, may validly adopt such plans and specifications for filling in of low lying areas adjacent to Arch Creek which, in its judgment, and without contravening constitutional standards, would best preserve their environmental character.