

HYPOCRISY IN THE PERMITTING PROCESS

I am very happy to be here today, and I welcome the opportunity to talk to you about a subject that has grown in my mind over the last ten years to the point of almost total frustration. That is, of course, the increasing hypocrisy that I see in the entire permitting process to the point where I think that it has become a **permitting game** rather than the serious procedure that was originally intended.

I'd like to begin, though, by complimenting The Florida Shore and Beach Preservation Association for their historical and ongoing concern for the preservation of Florida's beaches and intelligent use of coastal areas. I think that the one thing that has characterized this Association and its membership is the fact that they are oriented to **doing** things about problems, rather than just studying them or talking about them. I see The Florida Share and Beach Preservation Association and its members as pragmatists, not idealists. They seek to solve problems, not just stir the pot.

In addition, I am more than pleased to see that the role that is being defined by the Association is expanding into the areas of coastal land use and other coastal problems, not just the beaches. In the coming years we are going to see an increasing level of attention from all interested parties in the coast, as we have seen over the past couple of years, and this Association and its membership will have to stay current with that, if not ahead of it, in order to remain relevant and effective.

I feel that there are some fundamental changes in attitude that are simply going to have to occur on the part of all of the parties that have an interest in coastal problems, or we are going to find ourselves degenerating into a situation that is going to be counterproductive and where nothing gets done. Unless some of these attitudes change, and unless hypocrisy is significantly eliminated from the process, real solutions will never be achieved. We will simply all end up bickering with one another to the satisfaction of no one. We will all end up losers, and that is not what we set out to do.

I've been working in Florida's southwest coast since 1971, primarily on Sanibel and Captiva Islands. I was fortunate enough to be able to start a company that was dedicated to what I felt was quality development, to provide real value to our customers, to recognize that, in the long term, sensitive, environmental considerations in the development process were going to be the very reason for its success – and, that if one was going to work in the kind of area that I had chosen to work in, he had simply better do it right – it was good business and would match the interests of the general public as well.

I also happen to have operated a company over the past 12 years in a community that is exceptionally sensitive to these types of things; that is, Sanibel Island where the citizens are committed to the maintenance of a high quality of life. As a result, I think that I have gained a great deal from the interaction with those community leaders and with the residents of the community that has influenced the work that my company has

done. We have received a large number of awards and recognitions for our projects and I offer this simply as a foundation for the comments that I would like to make in terms of the observations that I've had over this entire process in this 12 year period.

I've applied for and received a number of environmental permits during this period of time. I've worked with the Corps of Engineers, The Department of Natural Resources, and of course, The Department of Environmental Regulation. The most significant of those permits was to undertake a privately financed beach nourishment project on Captiva Island that was accomplished two years ago. That permit, by the way, took 2½ years and \$3,500,000 in today's dollars to obtain. The project took 90 days to complete.

I have really become somewhat disillusioned from my experiences. I was originally supposed to come here and give a paper on all the things that happened with the beach nourishment permit for Captiva. Quite frankly, I can't do that. Those of you who have been around here for a few years know that story very well anyway.

What I really want to talk about is the “permitting game” that seems to have developed – particularly within the state of Florida and particularly with The Department of Environmental Regulation – in which all the participants are seemingly compromising their integrity and basic value systems to get what they can. I don't think that it was intended that we should all get in there, take a position that is so extreme that somewhere along the way a compromise can be reached that we might be satisfied

with. That's really not the way to operate the system. It is sad and wrong, and allowing it to continue, I think, is going to result in mistakes, degradation to the environment, and a system that will be satisfactory to no one. I think the time has come for all of us to go back to square one; to begin the process anew; to operate with a level of integrity and a dignity and respect for others and their opinions that will allow the issues to be rationally debated and decide upon their merits – not upon the strategies and tactics of the permitting game. I think that the politicization of the permitting process simply has to stop, and everybody in this room and all of the interested parties have to make a commitment to accomplish that, or it simply won't happen.

Now let me explain a little bit further what I mean.

As all of you know, there are typically three major players in the permitting game. There are the applicants and their supporters, the opposition and their supporters, and the agencies and governmental bodies who evaluate the request. I think all three of these are increasingly guilty of hypocrisy in the permitting process.

1. Applicants, especially developers, are often shortsighted and greedy. This has caused over the years a plethora of legislation to protect natural resources in the public interest. This also has caused an approach whereby more is asked for than what is legitimately needed so as to score well in the permitting game. It gets the entire process off to a bad start. And, quite frankly, this is understood by everyone.

I recall, back in 1972 when we were doing the initial land planning for The South Seas Plantation Resort, I asked a representative of the DER to come and advise me as to what I ought to be doing so that we could formulate our land plan with regards to the various rules and regulations. The advice that I got at that time, believe it or not, was, “you’d better get in here and dig out all of these mangroves, because the new rules are going to come into effect in another year or two and you won’t be able to do it.”

I think that’s rather extraordinary. I didn’t do it; sometimes I wish I had. I certainly had some problems later on getting some permits for a small part of that. But, the fact is, that’s a hypocritical and cynical approach to what is a legitimate concern and a legitimate problem that was used by many applicants at that time.

2. The opposition, especially those of an idealistic nature, move their focus almost immediately to the principal at state, often before they take the time to legitimately understand the specifics of a certain request, and the need for it. The opposition tends to paint a specter of doom and disaster if **anything** is done. They forget the fact that a major storm causes more turbidity along the beach face than dredging projects do. The basis for the opposition is typically emotional, and often exceeds in self-interest that of the applicant. This manifests itself, particularly in public hearings, in overstatements and conjuncture with no governing structure to prevent it.

There is nothing that says that someone in opposition at a public hearing has to be factual. They become the darlings of the media for their eminently quotable and newsworthy behavior and, quite frankly, this behavior takes the permitting game into virtual warfare where casualties are sure to exist.

3. Now the real responsibility lies with the 3rd party. Government, at both the agency and legislative level, frequently fails in its role to legitimately investigate and evaluate all of the interests involved. There are a number of reasons for this:

- First of all, there is generally and frequently insufficient manpower and financial resources in government to adequately stay ahead of events versus responding to problems and crises. To me, the biggest single deficiency that we face in our government system today is that we are always fighting fires and very seldom establishing firm and understandable policies for the future that we can all work with in a reliable way.
- Second, there's lack of sufficient qualified leadership in government to ensure that what is done is right versus what is done is expedient. Everybody's in there trying to get the job done. It's a day-to-day bureaucracy that builds, and unless some significant leadership is introduced, this process, I feel, is going to get worse.
- Third, there is a lack of objectivity in the ability to evaluate in a balanced way. This is especially true at the agency level, and by the way I feel,

especially true of the DER, where personal philosophy often appears to be the primary rationale for decision making.

It is very frustrating to be an applicant when this occurs. Sometimes it is very frustrating to be in the opposition when one is, instead of dealing with an agency that is trying to evaluate, is dealing with an agency that is trying to take a position, or establish a philosophy.

As both the organizer and the referee of the permitting game, government has two difficult jobs to do and the greatest need to do them with diligence and integrity. One of the challenges I hope to leave you with today is to impress this point upon those government officials with whom you come in contact, particularly at the state and federal levels.

Let me go a little bit further.

First of all, with the applicants, there is no doubt that there have been innumerable sins of the past committed by developers, and sometimes municipalities and county governments, where people who were trying to do things felt, at least at the time, that it was the right thing to do. Sometimes they were misled or were ignorant of the environmental situation. Sometimes, unfortunately, they were motivated by greed and personal self-interest. Their behavior really spawned the environmental movement and the appropriate legislative control, and led to the conclusion that indiscriminate dredge and fill and other environmentally damaging action should not be allowed to continue. I

saw a quote not too long ago that, to some degree expressed this philosophy, and I know a number of people who have followed it. It goes as follows: "It is easier to ask for forgiveness than to ask for permission." I reject that as a prime example of hypocrisy in the permitting process."

Government agencies should not allow this kind of behavior. I feel that applicants are being hypocritical when they approach things from that prospective. I think they need to be made to see that if they want to get something that is right, they'd better ask for it in a right kind of a way and abide by the rules that have been established.

I will say that I think the environmental message has been firmly received, particularly in the development community. I am very active in the American Land Development Association, and other industry groups, and there is no doubt in my mind that there is a high level of awareness that has been built over the years with regard to environmental importance. And, in fact, as I mentioned earlier, often times it makes simply good business sense. There is a whole consulting industry that has developed to provide advice to those that are seeking to do things of this nature, and in addition, in the coastal areas, of course, there are increasing numbers of municipalities and county governments that are seeking to do things to solve problems for their citizenry.

The biggest danger we face here is overkill on the part of the environmental movement. So much progress has been made, and I really feel so much sensitivity has been developed, that a backlash could occur if, in effect, the environmental movement moves

to “go for the throat” and threatens to absolutely stifle this down to nothing. That's why I think the preservationist approach is wrong. I think that it is going to be self defeating. It will ultimately provoke a backlash and then many of the gains that have been made will be lost.

With regards to the **opposition**, it's simply wrong, in my opinion, that groups organize to oppose an applicant without regard to the specifics of that application. In the South Seas Beach Nourishment Project, we had about eight groups that were objecting. One of them had a legitimate concern, and that was the fishermen. They fished the areas of our borrow site and they were sincerely concerned over the effect that dredging might have on the fish production of the area.

We had other groups, believe it or not, that came in from out of town to testify in public hearings against this project that didn't even know where Captiva Island was. I find that rather extraordinary. I would think that if one is going to object to something that someone else wants to do – they would at least have the dignity and respect for what the other person wants to do to find to where they live and why they want to do it.

As I mentioned earlier, my experience in public hearings is that outright exaggeration and conjecture is allowed. The applicant can't do that. He has to present his case with the best data he can produce in the most effective way that he can, and then let other people take pot shots at it with no regard to whether or not what they are saying is true. That's wrong. And, we can't allow that to happen.

In one instance, in the South Seas project, because we had this opposition, we spent a great deal of time and effort working with the local conservation foundation to organize a meeting with all of the opposition to try to work out some sort of compromise solution. The meeting was boycotted by the opposition. I find that hypocrisy to the “N”th degree. One individual went so far as to say, “I had a more important thing to do...I had to take a nap during that time.”

You know, I once had a definition of a zealot read to me. “A zealot is a person who redoubles his effort because he’s lost sight of his goals.” I felt in situations like the one described that I was dealing with zealots.

We had a situation at South Seas, as well, where we started out with media and community opposition to the project – until there was full understanding. As time went by, we found that both the media and the community rallied to our side when they saw the unfairness in which this was being handled, to the point where the final editorial policies and community support were very, very much in favor of the project.

Government. It is seemingly dominated by philosophical bias, particularly at the agency level, and that can be unfair. As I mentioned earlier, the South Seas project took 2½ years to go through the permitting process. Quite frankly, an awful lot of that time, in my opinion, even though I can’t really prove it, was simply stalling on the part of the DER to see whether or not we would run out of financial resources or the willpower

to get the job done. We held over 20 public hearings. We had a slide show that everybody got absolutely sick and tired of looking at – those that attended hearing after hearing after hearing.

We were in a situation where we had one hearing that was scheduled for Captiva Island. It was held, and there was good attendance. One individual wrote in later saying that he couldn't attend because he lived in Fort Myers, 35 miles away, and requested that a second hearing be held in Fort Myers, and by golly, the agency agreed to it. So we had 18 more people come down from Tallahassee, and many, many other individuals taking time off from their work to come to that second public hearing just because one individual couldn't find the time to drive 35 miles to Captiva to go to the first one.

We found interagency bickering and different opinions as to what ought to be done and what not to be done. We found that, increasingly, our community became concerned about this and started to recognize it as being a waste of tax dollars. Agencies should insist on factual representations from all parties and then they should perform their evaluative function based upon the law.

As I mentioned earlier, one of the things that the agencies have is rule making capability. This is the fourth branch of government, if you will, and you can find, if you really examine, particularly in the state of Florida, the various rules and regulations by which we operate is almost an entire new set of legislative principles. The agencies

have enormous power. If they are hypocritical in the use of that power, they are doing a disservice to those who pay for them.

What can we do? Well, we'd sure better do something. You listen to a situation like we're apparently looking at down the way here, and it just makes my blood boil. I think the permitting process, the "permitting game," is rapidly getting out of control. The focus is increasingly on the strategies and tactics of winning, rather than doing what is right. Valuable energies and human and financial resources are being wasted on a daily basis in fruitless political squabbling. Applicants should know the law and be able to plan accordingly. If you don't like the law, get it changed. But the law is there, and you shouldn't cheat on it. You're going to get everything off to the wrong start if you try to do that.

Somebody asked me one time, "why does your company always get what it wants?" I said, "look my friend, there is a big difference in getting what you ask for and getting what you want. What we ask for is legal, so we should get it. What we want may be entirely different, but we'll work through the normal legislative process to get that changed." Violating the law or cleverly skirting it simply gets everyone upset. I think that applicants need to keep that in mind.

A sincere applicant will have a sound technical case. We employed the very best experts in the South Seas project, some of them in this room and some recently departed, so that the credibility of their testimony was beyond dispute. Applicants

should work hard at communicating with the local community and all other interested parties to make sure they truly understand what is being attempted. You can rally community support, you can rally government support in that instance. Sometimes you can even persuade the opposition to your point of view.

Applicants should be sensitive to legitimate concerns. They should respond to those concerns. While some of the concerns that are expressed, I think, are hypocritical, others are legitimate, and one must come to recognize the difference and deal with those concerns that are sincere.

The applicant must be willing to persevere in the face of many, many odds and stick with it. Some will say, “what do you really need to get a job like this done?” I say, “you need a lot of money and a lot of time.”

The opponents have learned to emphasize and broaden their definition of what constitutes the public. We had one instance in which we were arguing with the fishermen over the health of the fish and one of the local property owners got up and said, “I didn’t realize that the fish belonged to the fishermen, I thought they belonged to the public as well.” I think that there is a need to recognize some of that. We all come with our various points of view, but I think we all need to recognize that the other point of view may have some validity and value.

Government officials simply have to develop and exercise greater leadership in the permitting process. They need to rise above the fray, not be a part of it. There needs to be a blending of philosophy with pragmatism that properly reflects the interest of all of the parties. And, they must pay attention to the laws upon which they govern, including those at the state and federal level that delineate that beach preservation and restoration is in the public interest.

You know, there is a gentleman that I have a lot of respect for that has addressed a number of these conferences in the past. He is Col. Jim Adams, and I want to quote from a talk that he gave a couple of years ago called The Politics of Beach Nourishment. He closed with some very strong remarks that I would like to leave with you that you can carry away, hopefully as a motivator to deal with the permitting game in a more honest and forthright way.

He said as follows: "Man has always chosen to live on the coast and will continue to do so by free choice. There are some who seek to preclude this free choice, who have already, with some arrogance, determined the proper use of all of the coastline – and would impose that view on the rest of us because we are presumably too stupid or greedy to do it their way. These same people almost throw up at the thought of private use or the protection of private use of the shoreline. Even when preservation of the environment or the expenditure of public monies are not the issues, opposition remains, fueled more by envy than by science.

The migration of Americans to the shorelines has accelerated with the increasing affluence of the population as a whole. These same people believe coastal protection is a proper responsibility of government, and current federal laws establish this as federal policy. We here, in the permitting agencies, are called upon to ease the collision between the works of man and the dynamics of the sea on our coastline. In many areas, our rapid exploitation of technology has led to abuses and, in allocating use of the coast, we have, on occasion, erred. Yet the record isn't anything to be ashamed of. Our errors of ignorance have led to quests for knowledge resulting in quantitative benefits for all mankind. On the coastline the public beach projects such as Miami Beach and private beach projects like Captiva Island demonstrate the obvious value of the technique. We should not be timid in using this process whenever we can and should."

I think that what he is saying is, in effect, let's not play the permitting game. Let's remove hypocrisy from these situations. Let's have applicants who sincerely identify a need and pursue that need in an honest and forthright way. Let's have an opposition that is being fair and honest in the methodology by which they choose to oppose. And, most importantly, let's have government agencies who are responsible, who do not enter into the argument, who perform their evaluative function, who are not trying to legislate through regulation. Let's have a system in which we can all deal with one another in a businesslike way. Let's have a system wherein we can understand where everyone else is coming from. Let's have a system where everything is out on the table where we can see it – where we can decide for ourselves what is right and wrong and

where, in the final analysis, we can simply get things done. I challenge you to take that back to your respective roles and see if you can make it happen.

Thanks very much.

Allen G. Ten Broek

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