

## Grass-roots warriors

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Homeowners angered by unchecked growth are increasingly willing to take on developers and city hall— and are more successful when they do

**B**oca Raton resident Bonnie Dearborn was gardening in her back yard one Saturday afternoon when she received a fateful telephone call.

Neighbor Roma Rittensbacher told her Boca Raton Community Hospital had purchased an adjacent apartment building and planned to demolish it to make way for a cancer treatment center.

Dearborn and Rittensbacher swiftly mobilized a group of residents to approach the hospital board and voice their concerns. They were worried about increased traffic, public access to residential roads and a proposed multi-story parking garage with an overpass that would give passers-by clear view into back yards and bedroom windows.

The board's response, Dearborn and Rittensbacher said, was indifference bordering on arrogance.

Years ago Dearborn and dozens of homeowners in the Lands End neighborhood might have shrugged their collective shoulders, conceded a greater good and gone about their business. Instead, they are gearing up for an all-out battle, and litigation may be inevitable.

Based on the success rate of other grass-roots movements, their chance of prevailing is close to 50-50.

Groups formed to fight specific projects or larger development plans are sometimes dismissed as being adherents of NIMBYism, an acronym short for "Not In My Back Yard."

Neighborhood activist movements



Consultant Patrick Slevin advises clients on getting political and residents' support for real estate projects.

are rising across South Florida. They have halted and/or delayed numerous projects, extracted cash settlements and perks from developers and even inspired several of their leaders to run for public office.

Property rights are on both sides of the battles. The activists are fighting to protect the character of their neighborhoods and what they see as an assault on the value of their homes. On the other side are entrepreneurs, developers and corporations who own a piece of property which they purchased with the intent of building on. "NIMBYists account for billions of dollars in losses every year due to proj-

ect delays, concessions, negative press, lawsuits, and political rejection," said Patrick Slevin, chief executive officer of the Slevin Group, a Tallahassee-based consulting firm specializing in helping companies win political and community support for their real estate projects.

"It's not so much the sophistication of the NIMBY industry, but more the absence of best practices on behalf of land-use professionals. ... The good news is land-use professionals can do more about the NIMBY syndrome. The bad news is many do not have the desire, knowledge or know-how."

One recent case in Miami-Dade

County pitted Florida's biggest condo developer, Miami-based Related Group, and hotel operator Starwood against the Balmoral and Majestic condo associations over redevelopment of the Sheraton Bal Harbour into a St. Regis hotel and luxury condo.

After some haggling, the project was modified to accommodate residents' concerns, and each condo association received \$1.2 million for any potential damage to their properties during the construction.

Fierce resistance to West Palm Beach's downtown redevelopment and ongoing battles in Miami against a number of high-rise condo proposals and big-box retailers are other examples of grass-roots campaigns.

"There's been a sea change in the last three years, almost like a revolution," said land use attorney Ron Weaver of the law-firm Stearns Weaver Miller Weissler Alhadeff & Sitterson. "Literally thousands of community and environmental organizations have been empowered by a combination of court rulings, mobilizations and seminars on how to successfully oppose a project."

And the battle is going statewide if New Smyrna Beach grass-roots group Florida Hometown Democracy has any say. A proposed 2008 state referendum would take land-use decisions away from elected officials and put them up for public votes. Under the referendum, requests for land-use changes would go on ballots for the next general election or developers could pay out of pocket for a special vote, said Palm Beach resident and referendum organizer Lesley Blackner.

"We're not talking about micro-managing development," she said. "It's the final vote that we're after. Everything else in the planning process remains as is."

The proposed amendment received an initial round of approval last month from the Florida Supreme Court. Supporters now have until January 2008 to finish collecting signatures, and Blackner said more than one-fifth of the 611,000 signatures are in hand.

"It's getting really, really ugly," said land-use, zoning and municipal law attorney Keith Poliakoff of the law firm Becker & Poliakoff in Fort Lauderdale. "The desire to spawn development and redevelopment is getting out of control, which in turn is bringing public policy, predevelopment procedures and even ethics into question."

He serves as deputy town attorney in Southwest Ranches in Broward County, and his firm has represented South Florida cities, developers and homeowners associations in numerous battles against development.

### Slamming Wal-Mart

Community organizations also have consultants willing to help grind unwanted projects to a halt.

Al Norman, director of Sprawl Busters in Greenfield, Mass., labeled by Forbes Magazine as Wal-Mart's No. 1 enemy, is working with Miami's The Grove First group against a proposed 125,000-square-foot Home Depot.

"Many of these big-box retailers are tapping out the American market and, particularly in South Florida, people's patience is wearing thin. These corporations can be inflexible, uncompromising and bulldoze people," said Norman, author of "Slam Dunking Wal-Mart."

"Confrontations thwart construction of new stores from three months to as much as three years, slowing their pipeline and delaying production. That's the price they pay for arrogance."

Rejecting the NIMBY acronym, Norman coined DUMBI, short for "Developers Undermining My Biggest Investment."

### Better odds

The NIMBYs are getting better at beating the DUMBIs.

Ten years ago, Florida community organizations lost to developers 90 percent of the time, Weaver said.

"Today we're looking more at 60 percent victory for these organizations," he said. "And in another cou-

ple of years we expect to see it even at 50-50."

Florida has been sprouting neighborhood activism for decades. Over the years, municipal and land use attorneys realized many government agencies were breaking their own comprehensive development plans to accommodate projects that would increase the tax base.

"Once it was realized that in certain instances a municipality may be in breach of its own laws, litigation started to be filed against the governing body that approved the development," Poliakoff said.

Community groups gained new confidence in 2001 following a dramatic grass-roots victory in Martin County.

Karen Shidel, a Jensen Beach secretary and a hero in the activist movement, went up against developer Pinecrest Lakes over its plans for a 20-acre tract behind her house.

The developer won county approval in 1995 for 136 apartments and began construction. Shidel sued and in 2001 a state appeals court ruled that the \$3.3 million luxury complex violated the county's comprehensive plan and had to be demolished. As a result, many banks stopped financing projects in litigation with municipalities.

Some government agencies have devised strategies to move ahead with major projects while staying out of court. Density transfers, transfers of development rights and outright density purchases have eased some projects through without comprehensive plan changes. That would allow developers to build more homes in a particular site, for example, than what would be allowed if they had to adhere strictly to the city's land-use plan.

### Chaos in Palm Beach

In Palm Beach County, developers and county officials find themselves at odds with many grass-roots groups.

A plan backed by Gov. Jeb Bush to use the 1,920-acre Mecca Farms property in western Palm Beach County for the headquarters of the Florida Scripps Research Institute failed in

the face of an environmental lawsuit.

Another lawsuit by Loxahatchee residents Alex Larson and Patricia Curry threatens to stop every major project planned west of the county's urban development core. In the case before Palm Beach Circuit Judge David F. Crow, Larson alleges the rezoning that went with the county's \$60 million purchase of Mecca Farms violated the county's 1989 comprehensive plan.

"This was a dirty transaction done over the weekend, and we are seeking nullification of the rezoning so the area remains agricultural or an ecosystem to help the Everglades," said Boca Raton attorney Barry Silver, who is handling Larson's case.

Silver has doubts about the legality of relocating the Scripps facility to the 682-acre Briger tract in Jupiter.

The lawsuit also jeopardizes Exploration Pointe, a mixed-use, community proposed by Dallas-based Centex Homes on the 4,700-acre Vavrus property, which has been under contract to the company for more than two years. Centex, one of the nation's largest home-builders, plans to build 10,000 homes in 15 years. Miami-based Lennar has opted out of the project.

"We are willing to back off from Briger if the county guarantees to us that Mecca and Vavrus will remain undeveloped," Silver said.

The future of other communities planned in the area by Coral Springs-based GL Homes and Boca Raton's EB Developers may hinge on Larson's case. The 3,923-acre Callery Judge citrus farm also is in play.

Construction of a 3,300-megawatt power plant by Florida Power & Light on 220 acres west of the Fox Trail community is also under attack. Larson and a group of 60 residents will oppose FPL at a project hearing scheduled for Sept. 6. Concerns include the potential hazards posed by the storage of 12.6 million gallons of diesel fuel at the facility.

### Hospital fight

The newest fight is just starting. Three south Boca Raton communities

headed by the Lands End Home Owners Association are colliding with Boca Raton Community Hospital over its plan for the cancer treatment center.

Dearborn, a Lands End leader, claims the hospital is trying to strong-arm the city into a rezoning that would breach the city's land-use plan.

"We never expected an apartment building could be acquired and turned into a hospital directly behind our homes," she said.

The hospital board has been intractable, according to Lands End attorney Poliakoff, and a lawsuit may be inevitable. Hospital board officials, however, have agreed to give Lands End \$8,000 for signs that identify the community's residential entrance. Discussions are ongoing about erecting an 8-foot wall to separate the hospital from the community. The rest of the requests are iffy.

"Lands End wants only three things: the building moved so it is not so close to the homes, the parking in the rear, and residential roads kept specifically for residential traffic," Poliakoff said.

"This will run its course for years, making its way through the state's judicial system. Meanwhile, no hospital will be built, and in the year 2009 the final ruling will be for the hospital to do the very things we are asking for now. The situation is that ridiculous."

Some disputes are not so dire. Davie's Chelsea at Ivanhoe neighborhood clashed in 2004 with car dealer Warren Zinn over his plans to build four dealerships on a 20-acre tract near their homes. The site on SW 148th Ave, east of I-75 off Volunteer Road, is the home of an Infiniti dealership that opened last week.

Chelsea at Ivanhoe president David Welborn got no response from Zinn until several dozen residents persuaded the Town Council to vote against the project. What could have turned into a lengthy legal battle was resolved when Zinn agreed to donate an acre for a park, install security gates in the community and pay an undisclosed cash settlement.

Projects big and small collapse under community pressure in Davie.

Purple T-shirts made the opposition highly visible when a proposed strip center drew an overflow crowd at Town Hall. Activists sold grilled hot dogs outside to help pay their attorney. Council members got the message and backed the neighbors over the would-be developer.

### The Home Depot battle

The prime targets of activist wrath in Miami-Dade County are high-rises and big-box retailers.

The Grove First, a group of hundreds of residents in Miami's Coconut Grove section, is in a struggle with Home Depot over its plans to build a store on the site of a former 70,000-square-foot Kmart on Southwest 32nd Avenue's Grove Gate Shopping Center. The old Kmart building would be demolished.

Grove First member Sue McConnell said a throng of supporters showed up at a March 2005 Miami City Commission hearing and presented more than 13,000 petitions opposing the proposed 133,000 square foot store.

The commission was not impressed and approved the project, saying the retailer had a right to build a C-2 industrial warehouse despite the site's C-1 light commercial zoning intended for bakeries, ice cream shops and the like.

Grove First regrouped and intensified efforts, resulting in the November 2005 passing of a city ordinance that limited future big-box stores in Coconut Grove to 20,000 square feet. It included a provision for a Class II special permit allowing up to 70,000 square feet. But the dispute was far from over. Home Depot had already submitted its application when the ordinance came into effect and was exempt.

Continued opposition in the following months convinced Home Depot to redesign the store from 133,000 to 125,000 square feet in a two-floor Key West design with a three-story parking garage and grocery store. The tussle has since continued back and forth over special permits

requested by Home Depot. A climactic hearing before the City Commission is scheduled for later this year.

Grove First founder Marc Sarnoff said anti-big box efforts will continue. "It's not that we're against Home Depot; what we are against is the operations of the store," Sarnoff said. "The traffic, the trucks, the day laborers, night time crime, outdoor sales, and the heavy presence of pesticides and fertilizers in extreme proximity to our homes all are elements we simply do not want in our village."

Sarnoff said a lawsuit against the city would be next if the project is approved. In an unusual tactic, the community group put together "Don't Box Me In — a Coconut Grove Story," a 30-minute documentary chronicling its effort to keep Home Depot from building in the Miami neighborhood. The group operates strictly on donations.

"This is truly a NIMBY syndicate at its very finest," said Slevin, of the Slevin Group, who uses Grove First in his studies of neighborhood activism. "If anything is learned from this lesson, it is that mitigation measures after the fact are useless. The developer who engages the community at the very beginning will have a greater chance of pre-empting and defeating these NIMBY godfathers."

## Political ambitions

Some activists are tired of looking at the decision-making from the outside.

In Lake Worth, Cara Jennings was elected to the City Commission in April after years of opposition to what she calls "irresponsible growth."

Jennings was known for her anti-Scripps demonstrations. She helped organize an event where protesters threw rotten fruit and sand into the offices of the Palm Beach County Business Development Board and others chained themselves to a stairway railing.

Scripps moved its proposed headquarter from Mecca Farms to Jupiter, but Jennings doesn't consider that a

complete success.

"We were demonstrating against bioscience, period," said Jennings, who replaced C.H. "Mac" McKinnon, an eight-year commissioner known for his pro-development views.

"Some pro-development people think that me winning is an oddity," Jennings said. "The truth is that this city has been fighting overdevelopment for many years. I'm just one voice of many that has been staunchly opposed to seeing Lake Worth gentrified and overbuilt."

Sarnoff of The Grove First recently announced plans to run for a Miami City Commission seat in November. He scoffs at critics who claim he has a one-issue agenda.

"Why should a person run for office if it is not for the concern and care of his community?" he asked. "It's not about opposing growth but rather endorsing intelligent growth."

Elsewhere, Chris Hrabovsky, head of the Friends of Anclote River community organization and a Tarpon Springs Wal-Mart fighter, is running for a state House seat.

## 'Coming to get you'

"People are fed up," said Joanne Davis, community planner for 1,000 Friends of Florida, which actively opposed Scripps at Mecca Farms. "Elected officials and developers are facing a whole new ballgame."

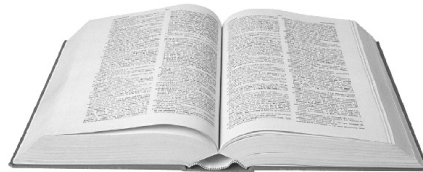
Slevin's advice to land-use professionals is to fight smarter.

"If they don't, then this pandemic will continue to spread, giving rise to more conflicts and ballot initiatives such as Florida Hometown Democracy," he said.

Sprawl Buster's Norman cautioned developers to prepare for more direct and fierce opposition. "Community organizations continue to grow and are becoming better organized and educated," he said.

"Developers with projects that feed urban sprawl must beware. They will be engaged and opposed at every outset; this is just the beginning of the end of uncontrolled construction in South Florida and around the nation," Norman said.

"We are armed to win and coming to get you." ♦



# COINED WORDS

According to the Oxford Dictionary of New Words, NIMBY — "Not In My Backyard" — was coined around 1980 by the head of the American Nuclear Society, a group that promoted the development of nuclear plants that consistently were opposed by communities and homeowners.

The derisive label has since become commonly used throughout the development industry and is often affixed to anyone who opposes development of any kind.

Variations include "NIMBYism" and "NIMBYness." The term has spawned a number of factious offshoots such as:

**BANANA:** Build Absolutely Nothing Anywhere Near Anything

**LULU:** Locally Undesirable Land Use

**CAVE:** Citizens Against Virtually Everything

**NOTE:** Not Over There Either

Source: The Slevin Group