

# Judge recommends water district deny permit to develop Harbour Pointe

## Leaves opening for developer to reduce impact to wetlands

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The Captiva Civic Association and its partners won a reprieve in their fight against the developer seeking to build Harbour Pointe when Administrative Law Judge J. Lawrence Johnston on Nov. 8 recommended the South Florida Water Management District deny the permit unless wetland impacts could be reduced.

"The Captiva Civic Association and our good friends at the Sanibel-Captiva Conservation Foundation and The Conservancy of Southwest Florida are pleased with the outcome of the law judge's recommended order," the CCA said in a news release. "We have won round one, but more permitting agencies steps follow."

The CCA joined with SCCF and the Conservancy to stop Mariner from developing units in the wetlands, Bill Fenniman, CCA board president said, "recognizing the importance of mangroves to our environment—particularly on a barrier island."

"It's a good fight and a fight we intend to win," Paul Garvey, CCA executive director added.

The CCA, SCCF and the Conservancy filed the petition challenging the development sought by Mariner/Plantation Development for the Harbour Pointe condominium development. That petition eventually sent the matter to a five-day administrative hearing in July. The hearing took place before Administrative Law Judge Johnston at the Division of Administrative Hearings in Tallahassee. While his order recommends the district deny the permit, it leaves open the possibility for the developer to reduce the impacts to the wetlands and thus move ahead with the permit.

Ray Pavela, president of Mariner Properties, said he was pleased with the judge's ruling and believed Mariner would be able to move forward with Harbour Pointe.

"The ball is now in the developer's court to come up with a plan to reduce the wetland impacts," Randy Smith of the SFWMD's West Palm Beach office said. Smith's statement assumes the district accepts the judge's recommended order. The district has another option.

The recommended order is scheduled to go before the SFWMD's governing board at its December meeting. At that time, the board can either accept the judge's recommendation or reject it.

- If the SFWMD accepts the recommended order, then the permit will be denied—but the developer still will have the opportunity to further reduce the wetlands impact in order to get the permit.

- If the SFWMD rejects the judge's order, the matter goes back before the judge. He will reconsider whichever parts of the petition he chooses and issue another, final recommended



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### The land in question at Harbour Pointe.

order, which will go back to the water management district's governing board for a final decision.

Smith said the Administrative Law Judge basically acts as a mediator due to the fact that the South Florida Water Management District is a state agency. "He's helping us make a decision," Smith explained. "He has to interpret the permit requirements of the SFWMD based on the complaints brought out in the petition brought by the CCA, SCCF, and the Conservancy of Southwest Florida."

"The Captiva Civic Association is not opposed to development on the island, we just want people to develop within the existing laws," Garvey said. "We think it's a really bad idea to destroy wetlands, especially when it's absolutely clear to anyone looking at this that it's not necessary to do it. In the event that Mariner does prevail ultimately on this, then there's a very high probability and risk that the other mangroves on South Seas will be developed," Garvey said.

After the SFWMD governing board makes its decision, the Harbour Pointe development project goes back to the Lee County Hearing Examiner for its revised recommendation to the Lee County Commissioners for a final county permit, according to the CCA's news release. The Army Corps of Engineers' permitting process and the U.S. Coast Guard's review for a drawbridge will follow, Garvey said.

"The good news is, a lot of testimony that was given at the water management district back in July will be very useful at the Army Corps level," Garvey said. According to Garvey, the Army Corps' review process regarding wetland development is much tougher than what happens in the earlier stages.

"We feel confident that at the federal level we have a very, very strong case," Garvey said.

"We've won one for the environment; Captivans have won one for the environment," Fenniman said. "It isn't over yet."

Garvey added, "If this ruling holds and Mariner is denied the permits to build on the wetlands here on the barrier islands, we believe that becomes a landmark decision for the state of Florida."