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AN ENVIRONMENTAL WORD

KATHLEEN SHEA ABRAMS†

I have been assigned the task of giving you an “environmental word” and for a number of days now I have been puzzling over the question of which word it shall be. I thought, of course, that it must be “water” and my associates from the South Florida Water Management District would probably agree that water can be a limit to growth. An article in the December 1984 issue of *Forbes* magazine¹ described water as a limit to economic growth, particularly in South Florida.

Then, I thought perhaps “coast” is the environmental word. I considered my experiences with colleagues on Florida’s Coastal Management Citizens Advisory Committee. As a member of that committee, I have learned about growth’s impact on the coast, where most of our past growth has taken place and where most future growth will take place between now and the year 2000 and probably beyond.

Then I thought perhaps the word should be “panther” — and certainly my friends in the conservation organizations and on the state’s Panther Advisory Committee might say that whether Florida is willing to save the panther is a test of our state’s commitment to protection of our wildlife and natural resources from the voracious appetite of population growth. Particularly now that the federal government is indicating that it is not willing to spend the money to put underpasses under I-75 as it passes through panther habitat, perhaps panther is a strong environmental word for growth management. Yet I was not satisfied that I had found *the* environmental word.

After considering those words and a number of others, I decided that the environmental word must sum up all that Florida’s environment requires for survival and health. I finally selected the word “excellence” and I am going to talk about excellence as a prerequisite for growth management.

The pursuit of excellence — we have heard that phrase used to describe a goal for our state’s educational system. We have not heard it used to describe a goal for our growth management system. And that is not to say that Florida is a washout in growth

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1. Frank, *Without Water, Everything Stops*, FORBES, Dec. 13, 1984, at 63.

management. Actually we have many success stories — the environmentally endangered lands program in the 1970's,² the CARL program³ that is in operation now, the Save Our Rivers program,⁴ and our state's efforts to identify and correct water pollution problems. I think that Florida has done a great deal in the areas of regulation and acquisition, which are two legs of the three-legged stool that we call "growth management."

Growth management has environmental roots. In the 1960's and the early 1970's, environmentally concerned citizens were upset by the air and water pollution and loss of natural areas that they witnessed in states across the country. In Florida, as in many other states, environmentally concerned citizens initiated legislative efforts to increase the state and regional role in land use regulation. The result was the passage in the early 1970's of Florida's landmark land use and water use legislation and a bond issue for acquisition of environmentally endangered lands. At that time and since then, the three-legged stool of growth management was built with regulation and acquisition as two sturdy legs, but the third leg of the stool — the planning leg — was cut off short.

When the Local Government Comprehensive Planning Act⁵ was adopted, it was accompanied by precious little funding and no effective standards for state evaluation. The state plan was intended to guide state actions in growth management but was turned into an optional add-on feature, not a steering mechanism at all. I think that acquisition and regulation naturally lend themselves to more understanding and more support on the part of citizens and legislators. First of all, regulation and acquisition tend to be resource-based. We regulate water pollution; we acquire beaches. But what do we plan?

Dan O'Connell's earlier reference to growth management as an amorphous term⁶ can be applied equally well to planning. As an activity, planning is difficult to describe in a few words and it has not been perceived as resource-based. However, that perception of planning is inaccurate. Planning helps to support acquisition and

2. The environmentally endangered lands program has been superseded by the Conservation and Recreation Lands program. *See infra* note 3.

3. *See* FLA. STAT. §§ 259.03, 253.023 (1983).

4. *See* FLA. STAT. § 373.59 (1983).

5. *See* FLA. STAT. ch. 163 (1983).

6. O'Connell, "The Public Administration Context," speaking at the conference: *Managing Megagrowth: Florida's New Mandate*, Tallahassee, Florida (Jan. 25, 1985) (available in the Florida State University College of Law Library).

regulation. Without it, the stool is weak and unstable. Planning might be able to improve both regulation and acquisition. I will give you an example of where I believe we have been missing our bet by failing to coordinate the use of regulation and acquisition through planning in order to conserve wetlands. We have improved our regulatory program for wetlands in this state and we have an acquisition program at the state level and at the water management district level that targets for priority acquisition the most pristine, the best, the most productive wetlands. However, those wetlands are the same ones that happen to be the best-protected by regulation.

In primary wetlands nowadays, it is very, very tough to get a dredge and fill permit, or a surface water management permit that would allow drainage or significant alterations. Yet, we use our scarce resources, our scarce acquisition funds, to purchase those wetlands. The wetlands adjacent to the pristine wetlands may be extremely important, but are not at the top of the regulatory list or the acquisition list. We call them seasonal wetlands, transitional wetlands, periodic wetlands, or secondary wetlands. Those wetlands are easier to develop, easier to get permits to drain and dike, and when they are drained, diked, and developed, the impacts can affect the adjacent primary wetlands. If we do not acquire the secondary wetlands as a buffer strip around the primary wetlands, the adjacent development deteriorates the other wetlands. My belief is that our priorities for wetland acquisition should be based on a plan that coordinates regulation and acquisition so that we buy those wetlands that are not already adequately protected, but which have substantial effects on the integrity of primary wetlands.

Coordination is also lacking within the regulatory area itself, but this is not news to any of the developers who have told me horror stories about having to go from pillar to post in order to get regulatory permits. From an environmental standpoint — since that is what I am supposed to be talking about today — the lack of regulatory coordination is also counterproductive. I will use, as an example, the Exxon pipeline in the Big Cypress. I use Exxon as an example not because they have necessarily done something more horrible than anybody else, but because this example of poor coordination occurred recently, within the last few months. In order to lay the pipeline, Exxon obtained a number of permits including a permit from the South Florida Water Management District to allow the work to occur in the District's right-of-way.

Exxon strayed far outside the right-of-way and, in doing so, destroyed a wide swath of sawgrass for a number of miles across the Big Cypress. The destruction can have serious consequences for the Big Cypress. About ten to fifteen years ago, when Sunnyland put a pipeline across one of the District's conservation areas, a wide strip of sawgrass was destroyed in the process. At that time, it was expected that the vegetation would just grow back and look the way it had before. Fifteen years later, the scar is plainly visible. When damaged, our subtropical paradise does not necessarily heal itself. The Exxon case, I would say, was a failure in regulatory coordination. An interagency committee had met to develop a plan for how the pipeline was to be regulated but, in the process, no agency was identified as the lead agency for monitoring and enforcement of that plan. When the Exxon violation was finally discovered, agency reaction was a surprised "But I thought that another agency was supposed to be watching." I think that is the kind of lack of intergovernmental coordination that our state's environment cannot afford.

A few days ago, I reviewed a draft of the proposed state plan to see what it has to say about intergovernmental coordination. I found the intergovernmental coordination goal at the end of the state plan. It reads as follows, "Florida will integrate systematic planning capabilities into all levels and branches of government with particular emphasis on intergovernmental coordination and citizen involvement." That goal seems worthy and important. I compared it with some of the other goals in the plan and found that, unlike this goal, the other goals are stated in measurable terms. They incorporate criteria like "We shall acquire 100 miles of beaches by 1995," or "We shall have no further reduction in important wetlands," or even "We shall maintain our per capita public expenditure within the bottom twelve states of the United States." Now you may not agree with the last goal in the list I just read, but it certainly is measurable.

When I looked again at the goal about intergovernmental coordination and citizen involvement, I asked myself, "How will any of us know if and when we are approaching that goal?" I could not find any guidance within the plan for answering that question. So I would like to suggest some guidelines. We will know we are approaching that goal:

‡when we retain talented and imaginative people in state government, not just at the top level but at the entry and mid-levels, to implement coordination of agency efforts with other agencies

and levels of government;

†when we recognize and reward effective performance in inter-governmental coordination; and

†when we are willing to provide the staffing and support for effective intergovernmental coordination.

Only then will we be approaching that goal.

Coordination is tough to do and tougher still to do well, because it requires time, it requires effort, it requires communication, and it requires cooperation. Government contains many disincentives for intergovernmental cooperation: insufficient staffing, great distance between Tallahassee and local governments or regional agencies, competition among agencies for scarce funding, and scarcer recognition. Distrust between agencies and between levels of government results from that competition. Disincentives are many but incentives are few for intergovernmental coordination. I have rarely heard anybody receive praise and recognition for doing an excellent job at intergovernmental coordination. Have you?

Now I would like to address myself to the second part of that goal, the part that calls for improved citizen involvement. The state plan discusses the need to provide citizens with improved feedback and a feeling of greater participation in decision making. Dr. Mandelker's remarks concerning the significance to growth management of citizen standing are relevant here.⁷ We will not have effective citizen participation unless we have effective citizen standing in Florida. In Palm Beach County, citizens found that they do not have standing to sue in order to require a local government's land use decisions to conform to its own local government comprehensive master plan unless those citizens happen to be owners of property adjacent to the proposed development.⁸

In the case of DRIs, not even adjacent property owners have standing to appeal.⁹ In response to this lack of citizen standing, a citizen initiative began last year and thousands of signatures were collected around the state to bring the standing issue to a referendum vote. The petition specifically calls for a referendum on the issues of giving citizens a right in the state constitution to environ-

7. Mandelker, "A Legal Framework," speaking at the conference: *Managing Megagrowth: Florida's New Mandate*, Tallahassee, Florida (Jan. 25, 1985) (available in the Florida State University College of Law Library).

8. See Citizens Growth Management Coalition of West Palm Beach, Inc. v. City of West Palm Beach, Inc., 450 So. 2d 204 (Fla. 1984).

9. See Caloosa Property Owners Ass'n v. West Palm Beach County Bd. of County Comm'rs, 429 So. 2d 1260 (Fla. 1st DCA 1983).

mental health and welfare and providing them with legal standing to sue if government at the local, regional, or state level is not doing its job.

That initiative fell just a few thousand signatures short of the required number for qualifying for a referendum in 1984. However, the initiative is continuing, and I feel confident that the issue will be brought to the voters of the state in 1985 unless the legislature addresses the issue more effectively than it did last year. I believe that the state plan's goal of citizen participation by providing citizens with feedback and a feeling of greater participation is so much window dressing unless citizens have a real role in assuring whether and how government is doing its job.

I will close by saying that meaningful citizen participation and effective intergovernmental coordination represent standards that I will use for judging whether our state is serious about seeking excellence in growth management.