

Opinion

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Let's make a deal

The appellate court decisions in the Lost Tree islands case makes a settlement even more desirable.

That \$15 million offer to buy the Lost Tree islands from Lost Tree Village Corp. should be looking better and better — to Vero Beach and Indian River Shores. Those two localities may well have been too clever, not by half but by \$72 million or so, in the ways they've gone about preventing the corporation from developing the inner islands.

In a decision released Wednesday, the 4th District Court of Appeals pummeled some of the key arguments the localities have made in their defense of a lawsuit in which the corporation seeks \$72 million in compensation. The two localities, the corporation charges, have "taken" the use of the islands by making economical development impossible. Given the history and the law, the appellate court said, major claims made in that suit can go forward.

In 1989, the court notes in its opinion, Lost Tree Village made known its plans to build houses on the islands and to construct a bridge from the islands, which are in Indian River Shores, to a street that extends into Vero Beach.

In 1990, both Indian River Shores and Vero took actions that, combined, prohibit such a bridge. The Shores' amended its comprehensive plan so there can be no development without a bridge. Vero passed an ordinance prohibiting more bridgeheads on city property.

Neither locality made any bones about its purpose: to stop residential development of the islands, and ultimately to purchase them for conservation.

Each locality has contended that its individual ordinance does not, by itself, "take" anything from the developers. Each also has argued that the corporation's failure to apply formally to build a bridge or find some other way to get future residents of the islands to the mainland means it can't yet seek damages in court. But not only common sense refutes those arguments. Past court cases do, too.

The U.S. Supreme Court, the appellate court noted, has said that the combined effect of actions taken by two levels of government can count as a "taking" of property for which the owner is due compensation. The fact that each level acted individually and independently matters only if and when any compensation awarded by the court is divvied up between them.

And, the appellate court continued, federal and Florida courts agree that when it has become clear that applying for a use of the property is futile, the owner need not apply, and be refused, before filing suit.

Lost Tree Village has not won its suit; it has won only the opportunity to again argue its case for compensation in the lower court — and considerable vindication of its legal arguments. Indian River Shores and Vero Beach have not lost the suit, and their attorneys say they have other arguments to make before the lower court. But their offer to end the suit by buying the islands from the corporation for \$15 million, \$8 million of which will come from state rather than local funds, is still on the table, though with changes requested by the corporation that will benefit the corporation. And unless a deal is sealed by Feb. 12, the state's funds will be off the table.

A contract for purchasing the islands, Vero Beach City Attorney Charles Vitunac tells us, is "moving along quite nicely." But outstanding issues remain, and the expense of pursuing the suit is considerable for all sides. There's no time like the present, it seems to us, for the Shores and Vero to learn just how much sweeter the deal must be to settle this longtime dispute outside court.

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Nobody has yet won or lost, but Lost Tree Village has gained some vindication.