

# Longboat Resident Battles for a Buildable Lot

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Staff Writer

When is a canal not a canal? That was the question intended for the Zoning Board of Adjustment (ZBA) on Thursday. Attorneys for William Saba, a Longboat Key property owner, hoped to have that question answered by the ZBA at their Regular Meeting this week.

The canal question actually originated in October, 2002 when Saba's attorney, Charlie Ugarte, asked the Town's Planning and Zoning Department for clarification of some key issues before his client made plans to build a single-family home on his property.

One of the questions centered on where the lot at 450 North Shore Road is situated in relationship to the shoreline and nearest body of water. In a fax dated Oct 4, 2002, Ugarte asked the Planning and Zoning Department, "Is the lot on a pass or is it on another body of water?" He also asked if the lot could be considered to be on a canal and, if so, what the waterside setback would be.

In a letter to Ugarte on Oct 4, Jill Jeglie, the Planning and Zoning Director at the time, answered, "The 30-foot canal waterfront yard from the mean high water line or bulkhead will be applied."

Zachary Abuza, who lives adjacent to Saba's property, took issue with that response and filed an Appeal of Decision of an Administrative Official on November 4, 2002. In the appeal, Abuza's attorney, Richard Ulrich, says "the property obviously abuts Longboat Pass and is not abutting a canal." Ulrich says his client would "suffer special damages" if Saba were allowed to build a home on the empty lot next door to Abuza.

Whether the lot is located on Longboat Pass or a canal may seem insignificant to some, but for a property owner it may mean the difference between building a dream home or owning an empty lot in perpetuity. It also means the difference between a 20-foot canal waterfront setback and a 150-foot pass waterfront yard. Since Saba's property is only 9,600 square feet, a 150-foot setback could ultimately make his lot unbuildable.

Azuba's attorney contends that if Saba exercises his right to build a single-family home on the vacant lot, his client may have erosion, flooding, density and storm damage issues on his property.

For many months, a flurry of paperwork, a bevy of

expert opinions and several interpretive definitions were issued from both the attorneys. Several continuances were requested over subsequent months from both parties until it finally made it to the ZBA's June 1 agenda, over three years after the appeal was filed.

Since the tussle over terminology lasted long enough for a completely new board membership to take the reins of the ZBA, each member was issued two-inch thick agenda packet this week filled with hundreds of pages of documentation. On Thursday, the ZBA began hearing the concerns of both parties.

## The Board Meets

Before the board could begin to address whether Saba's lot is located on Longboat Pass or on a canal, Michael Furen, the attorney representing Saba, asked the board to consider a series of procedural requests. Furen first asked the board to disallow expert testimony on the grounds that the issue before the board was simply a matter of law, not interpretation of an ordinance; therefore no expert testimony was required.

Abuza's attorney, Richard Ulrich, countered that because the board is made up of laypeople and not experts in coastal engineering, the expert testimony of people in the field should be allowed. Furthermore, said Ulrich, in preparing her response in October, 2002, Planning and Zoning Director Monica Daigle considered the opinions of Public Works Director Juan Florensa and Cliff Truitt, a technical advisor to the Town. "Ms. Daigle used (them) as experts," Ulrich told the board. "My client should have experts too."

The board asked Town Attorney Andy Cohen for his opinion. Cohen said he felt the issues at hand are a mixture of fact and law, therefore expert testimony should be permitted. The board agreed and said they would allow experts to testify for both parties.

Furen also raised the issue of whether Abuza had the right to petition the board for a decision reversal in the first place. Furen said that to file a petition such as the one before the board, there has to be sufficient reason to challenge an ordinance or decision. "Simply being a neighbor isn't enough," he said.

Ulrich told the board that his client "fits the classic definition of what an aggrieved party is." Abuza's attorney cited several ways in which his client would be affected if Saba were allowed to build a home on his lot including: damage from flying debris from Saba's home during a hurricane, erosion and flooding issues and a loss of property value. "You have to look at the whole (picture). All of these things will damage Mr. and Mrs. Abuza," he said.

Board chairman Patricia Zunz said she was troubled by that argument and didn't think that Abuza's petition had enough merit to warrant a hearing. "If you live next to a vacant lot, it's reasonable to expect something will happen there," said Zunz. "...I don't feel that Abuza has a legitimate claim to standing in this case."

Board member Sandra Boynton agreed. "I'm not sure it's clear cut that he is an 'aggrieved party'," she said. Boynton also pointed out that historically the Town listens to and carefully considers the opinions of its residents regardless of the apparent validity of their concerns.

Several articles of case law were referenced by both attorneys as they sought to reinforce their positions, leaving many on the board wondering if a more thor-

ough review of the law was warranted before proceeding. Attorney Cohen said that he would also appreciate an opportunity to review the newly presented case law so he could be in a better position to advise the board throughout the hearing.

After a discussion with both parties' attorneys and Attorney Cohen, the board decided to continue the matter until both sides could present briefs outlining the case law they referenced during Thursday's hearing. It was decided that Furen and Ulrich will submit their briefs no later than Sept. 19 and Attorney Cohen will review them and respond to the board with his opinion by the end of October. The issue will again appear on the ZBA's Nov. 9 agenda.

## Everybody has an Opinion

At the outset of the disagreement in 2002, the issue was rife with tension and challenges as the experts attempting to define the difference between a lagoon, a canal and a pass vehemently disagreed.

In January of 2003, Longboat Key's Public Works director Juan Florensa, and Cliff Truitt, a technical advisor to the Town, had reviewed the documentation accompanying the appeal and said they fully supported P & Z director Jeglie's position that Saba's lot abutted a canal and not Longboat Pass.

In August, 2003, Saba hired a coastal engineer to review the documentation and offer his opinion on the matter. In a letter to the Zoning Board of Adjustment, D.T. Tackney referenced sources ranging from the U.S. Army Corps of Engineers Shore Protection Manual to Webster's Dictionary to define the terms inlet, shoreline, lagoon and pass. Tackney concluded that Ulrich's "relatively novel" opinion that Saba's lot abuts Longboat Pass was incorrect and said that the property "clearly fronts or abuts a lagoon."

In March, 2004, environmental consultant Donald Lee wrote a lengthy report detailing the Town's classifications of waterfront yard requirements and the evolution of the Town codes that apply to this issue. While making his case, Lee offered his interpretation of the commissioners and Town staff's motives and reasoning as the codes were shaped over the years. In the end, Lee concluded that "(t)he subject property lies along the southern shoreline of Longboat Pass, where the Required Pass Waterfront Yard classification should be applied."

That, in turn, prompted a somewhat scathing reply from Tackney who wrote that he found Lee's report "difficult to follow" and suggested that his references were "incomplete." He then went on to say, "Mr. Lee's interpretation of the intent, mind-set and understandings of the Town Commission in adopting the current set back regulation reflect a clairvoyance that, if verifiable, would be quite remarkable."

Furen told the board on Thursday that Lee's report is "pure hearsay" and asked that it not be allowed to be part of the proceedings. "If you do allow it, then strike certain parts of the report," said Furen. "Conclusions about what was in the minds of the Town Commission from someone who was not present at the time of enactment is not proper...for an expert witness."

Truitt had the last word in a May 25 letter, saying that he had reviewed both Tackney's and Lee's reports, he remained steadfast in his opinion that "...classification of the site as fronting a canal or other waterway would be technically reasonable and defensible."

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## Debris, from Page 1

munition will be compromised.

*In some areas debris may be significant enough so that the 'first push' debris pile will preclude any work on adjacent properties being initiated until the first push debris can be cleared. This will depend on the amount of debris handling space available on and off the Island.*

*If the Town cannot respond in an acceptable time-frame for a property owner and that property owner gets the work done on their own, does the Town reimburse them for the cost? What if they paid a higher rate for the work than allowed by FEMA?*

*Are commercial properties included? (i.e., resorts, hotels, motels, restaurants, banks and convenience stores)*

*The Town Commission needs to provide policy direction on how to prioritize which properties get cleared first.*

*When will Longboat Key citizens be allowed back on the Island? The current plan is to allow people back to initiate their recovery efforts when paths of travel on roads have been cleared and major safety haz-*

*ards such as downed power lines are determined to have been de-energized. If for any reason the cleanup process takes an extended amount of time, we were going to try to allow building managers (up to four people) limited access to start the private assessments and a possible second wave of up to 10 employees to begin securing and clearing roadways and parking lots. Under the new proposal when does the Town Commission anticipate that people would be allowed to return to the Island?*

*We have asked our pre-positioned debris removal contractor to estimate the cost ranges for debris removal for Category 2, 3 and 4 hurricanes on an island the size of Longboat Key. The figures have been adjusted up slightly to account for the possibility of storm surge that are not factored into the Corps of Engineers' damage calculations. This information is being provided so that you will understand that there will be significant costs to the Town that might not be reimbursed if the Town's reimbursement efforts are compromised by the work done on private property. We do not think that it is likely that the entire cost would be disallowed. At the same time we do not know what percent would be reimbursed, so the entire range is provided."*