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Feb 14 2001 17:00 P.03

**IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA**

BRIDGE TOO HIGH COMMITTEE INC.,
DR. AND MRS. LAWRENCE LUDWIG,
RICHARD ANGELOTTI,
MR. AND MRS. LOUIS VOSE,

Petitioners,

v.

FLORIDA DEPARTMENT OF TRANSPORTATION
AND SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,

Respondents.

00-4827 JJ

CASE NO.: _____

**PETITION FOR WRIT OF PROHIBITION
TO EFFECTUATE THE AUTOMATIC STAY
DURING THE PENDENCY OF
APPEAL PROCEEDINGS BEFORE
THE FIRST DISTRICT COURT OF APPEAL**

Petitioners, BRIDGE TOO HIGH COMMITTEE INC., DR. AND MRS. LAWRENCE LUDWIG, RICHARD ANGELOTTI, MR. AND MRS. LOUIS VOSE, petition the First District Court of Appeal for a Writ of Prohibition, prohibiting further actions in the administrative permitting proceeding regarding the issuance of a Southwest Florida Water Management District ("SWFWMD") permit to the Florida Department of Transportation ("FDOT") to demolish the existing Ringling Causeway Bridge and construct and operate the Ringling Causeway Replacement Bridge, pending completion of judicial review before this Court of FDOT's decision to construct the Ringling Causeway Replacement Bridge as a high, fixed-span bridge. In support of its Petition for Writ of Prohibition, Petitioners allege the following grounds:

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1. On February 15, 2000, the City of Sarasota, Florida, sought review by appeal to the First District Court of Appeal of FDOT's decision to build a high, fixed-span bridge to replace the current Ringling Causeway bascule bridge.
2. On March 16, 2000, the First District Court of Appeal consolidated the City of Sarasota appeal with an appeal filed by the Bridge Too High Committee, Inc., from the same agency action.
3. The consolidated appeal is pending before this Court under the style, CITY OF SARASOTA, AND BRIDGE TOO HIGH COMMITTEE, INC., Appellants, v. STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, TOWN OF LONGBOAT KEY, AND GOOD BRIDGE 2000, Appellees, CASE NOS. 1D00-644 and 1D00-609 ("the consolidated appeal to the First District Court of Appeal").
4. By virtue of the appeal by the City of Sarasota in the consolidated appeal to the First District Court of Appeal, the FDOT's decision to build a high, fixed-span bridge to replace the Ringling Causeway Bridge is automatically stayed pursuant to Rule 9.310(b)(2), Fla.R.App.P., which provides in pertinent part:
 - (2) Public Bodies; Public Officers. The timely filing of a notice [of appeal] shall automatically operate as a stay pending review ... when ... any public officer in an official capacity, board, commission or other public body seeks review
5. In the consolidated appeal to the First District Court of Appeal, part of the relief sought by Appellants is to have set aside the FDOT decision to build a high, fixed-span bridge.
6. Oral argument in the consolidated appeal to the First District Court of Appeal has been scheduled by this Court for March 13, 2001.

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7. Despite the automatic stay resulting from the consolidated appeal to the First District Court of Appeal, FDOT has nevertheless sought to obtain a permit for the demolition of the existing Ringling Causeway Bridge and the construction and operation of the high, fixed-span Ringling Causeway Bridge Replacement project from the SWFWMD.

8. The Bridge Too High Committee, Inc. (the "Committee"), and several individual members of the Committee, have challenged the issuance of this permit in a proceeding pursuant to Section 120.57(1), Florida Statutes, which is pending before the Honorable J. Lawrence Johnston, Administrative Law Judge, State Division of Administrative Hearings, in a case styled, BRIDGE TOO HIGH COMMITTEE INC., DR. AND MRS. LAWRENCE LUDWIG, RICHARD ANGELOTTI, MR. AND MRS. LOUIS VOSE, Petitioners, v. SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, FLORIDA DEPARTMENT OF TRANSPORTATION, GOOD BRIDGE 2000, INC. AND TOWN OF LONGBOAT KEY Respondents, DOAH CASE NO. 00-4827 ("the pending DOAH permitting proceeding").

9. A final hearing in the pending DOAH permitting proceeding is scheduled for March 6 through 9, 2001.

10. On February 7, 2001, the Committee filed in the pending DOAH permitting proceeding its Motion to Continue Final Hearing on SWFWMD Bridge Construction Permit Based on Stay of Bridge Design Decision, a copy of which is attached hereto as Exhibit "1," requesting that the demolition, construction and operation permit proceedings be continued pending the issuance of the mandate in the consolidated appeal to the First District Court of Appeal.

11. On February 9, 2001, Administrative Law Judge J. Lawrence Johnston entered an order, a copy of which is attached hereto as Exhibit "2," which denied the Committee's Motion to Continue Final Hearing in the pending DOAH permitting proceeding.

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12. In the consolidated appeal to the First District Court of Appeal, FDOT has taken the uniquely peremptory position that its decisions as a transportation planner are immune from challenge and judicial review under Chapter 120, Florida Statutes, the Administrative Procedure Act.

13. In addition, FDOT has flouted the automatic stay in the consolidated appeal to the First District Court of the Appeal of FDOT's decision to demolish the existing Ringling Bridge and to construct and operate a high, fixed-span bridge by seeking and obtaining a permit to do just that from SWFWMD in the pending DOAH permitting proceeding.

14. If the Committee and its members had not challenged in the pending DOAH permitting proceeding the issuance of the SWFWMD permit, the permitting process for the demolition of the existing Ringling Causeway Bridge and the construction and operation of the high, fixed-span Ringling Causeway Bridge Replacement project would already be final.

15. The Committee is being forced to fight a battle on two fronts, both on appeal and on the issuance of a permit, as though the FDOT decision to demolish the existing bascule bridge and construct and operate a high, fixed-span bridge had never been stayed automatically in the consolidated appeal to the First District Court of Appeal.

16. FDOT's disregard of the subject stay not only potentially wastes private and public funds, it constitutes a direct, contemptuous disregard of the appellate jurisdiction and authority of the District Court of Appeal to stay FDOT's decision pending appellate review.

WHEREFORE, based on the foregoing, Petitioners respectfully request the First District Court of Appeal to issue a Writ of Prohibition prohibiting further proceedings in BRIDGE TOO HIGH COMMITTEE INC., DR. AND MRS. LAWRENCE LUDWIG, RICHARD ANGELOTTI, MR. AND MRS. LOUIS VOSE, Petitioners, v. SOUTHWEST FLORIDA WATER

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MANAGEMENT DISTRICT, FLORIDA DEPARTMENT OF TRANSPORTATION, GOOD
BRIDGE 2000, INC. AND TOWN OF LONGBOAT KEY Respondents, DOAH CASE NO. 00-
4827, the pending DOAH permitting proceeding regarding the issuance of a SWFWMD permit to
FDOT to demolish the existing Ringling Causeway Bridge and construct and operate the Ringling
Causeway Replacement Bridge.

Respectfully submitted,

DAVID M. LEVIN, ESQ.

Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.

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- and -

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2070 Ringling Blvd.

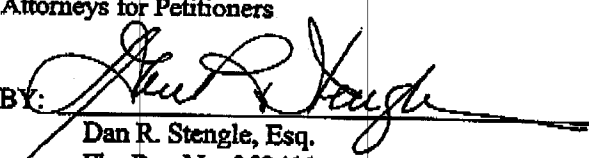
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Fla. Bar No. 169636

Attorneys for Petitioners

BY:


Dan R. Stengle, Esq.

Fla. Bar. No. 352411

(850) 222-7500

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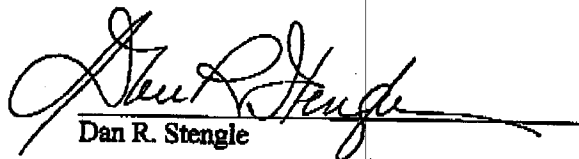
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail and Facsimile to Robert C. Downie, II, Assistant General Counsel, Florida Department of Transportation, 605 Suwannee Street, Tallahassee, Florida 32399-0458 (FAX: 850-488-4412) and Jack Pepper, Assistant General Counsel, Southwest Florida Water Management District, 2379 Broad Street, Brooksville, FL 34609 (FAX: 352-754-6878), Henry P. Trawick, P.A., Counsel for Good Bridge 2000, Inc., P. O. Box 4019, Sarasota, Florida 34230 (FAX: 366-8941), and David P. Persson/Andrew H. Cohen, Counsel for Town of Longboat Key, 2033 Main Street, Suite 400, Sarasota, Florida 34237, (FAX: 365-3259) this 12th day of February, 2001.


Dan R. Stengle

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STATE OF FLORIDA
 DIVISION OF ADMINISTRATIVE HEARINGS

BRIDGE TOO HIGH COMMITTEE INC.,
 DR. AND MRS. LAWRENCE LUDWIG,
 RICHARD ANGELOTTI,
 MR. AND MRS. LOUIS VOSE, ET AL.

Petitioners,

DOAH CASE NO.: 00-4827

v.

SOUTHWEST FLORIDA WATER
 MANAGEMENT DISTRICT AND
 DEPARTMENT OF TRANSPORTATION,

Respondents.

MOTION TO CONTINUE FINAL HEARING ON SWFWMD BRIDGE
 CONSTRUCTION PERMIT BASED ON STAY OF BRIDGE DESIGN DECISION

Petitioners, BRIDGE TOO HIGH COMMITTEE INC., DR. AND MRS. LAWRENCE LUDWIG, RICHARD ANGELOTTI, MR. AND MRS. LOUIS VOSE hereby move for continuance of the final hearing in this proceeding on the SWFWMD construction permit for the Ringling Causeway Replacement Bridge and a stay of all other proceedings herein based on the automatic stay of the underlying bridge design decision pending completion of judicial review of that decision by the First District Court of Appeal in *City of Sarasota and Bridge Too High Committee, Inc. v. FDOT*, 1st DCA Case Nos. 1D00-609 and 1D00-644. As grounds, Petitioners state as follows:

1. On February 15, 2000, the City of Sarasota, Florida, appealed to the First District Court of Appeal, the FDOT's design decision to build a high, fixed-span bridge to replace the current Ringling Causeway bascule bridge.

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2. On March 16, 2000, the First District Court of Appeal consolidated the City of Sarasota Appeal with an appeal filed by the Bridge Too High Committee, Inc., from the same agency action.

3. The Florida League of Cities and 1000 Friends of Florida have been permitted by the First District to file amicus briefs in support of the City of Sarasota and Bridge Too High Committee, Inc.

4. By virtue of the appeal by the City of Sarasota, the FDOT's decision to build a high, fixed-span bridge to replace the Ringling Causeway Bridge is automatically stayed pursuant to Rule 9.310(b)(2), Fla.R.App.P. which provides in pertinent part:

(2) Public Bodies; Public Officers. The timely filing of a notice [of appeal] shall automatically operate as a stay pending review ... when ... any public officer in an official capacity, board, commission or other public body seeks review

5. Part of the relief sought in the appeal to the First District Court of Appeal is to set aside the FDOT's decision to build a high, fixed-span bridge.

6. Oral arguments has been set by the Court for March 13, 2001.

7. Counsel for the FDOT has informed counsel for the Petitioners on February 5, 2001, that the FDOT is "going ahead at its own risk" with the effort to obtain the SWFWMD construction permit to begin construction on the high, fixed-span design even though the design decision may be invalidated by the First District Court of Appeal in the pending appeal.

8. At the same time, counsel for the FDOT has informed counsel for the Petitioners on February 5, 2001, that the FDOT is spending "tens of thousands of dollars" on expert witness testimony to supplement the FDOT's SWFWMD construction permit applications and has informed counsel for the Petitioners that the FDOT may seek to recover these expenditures from the

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individual citizen Petitioners who have challenged the SWFWMD permit decision. See last paragraph of Exhibit "A" attached hereto.

9. The purpose of the automatic stay pending appeal is to prevent a situation in which, even though the public body taking the appeal is ultimately vindicated, a construction project may have already advanced to the point that it is financially infeasible to reverse it. See St. Lucie County v. North Palm Beach Development Corporation, 444 So.2d 1133, 1135 (Fla. 4th DCA 1984) rev. den. 453 So.2d 45 (Fla. 1984).

10. Proceeding with the hearing on the SWFWMD construction permit would constitute contempt of the automatic stay. See State ex rel. Mariano v. Robles 147 So. 910 (Fla. 1933).

11. FDOT on the one hand is gambling with millions of tax dollars by pursuing construction of a bridge "at its own risk", pending judicial review of the validity of the FDOT decision to build a high, fixed-span bridge. On the other hand, FDOT seeks to intimidate individual citizens with the threat of personal financial ruin if they continue to oppose FDOT's gargantuan intrusion on Sarasota Bay, one of Florida's designated Outstanding Florida Waters, in this SWFWMD construction permit challenge.

12. Quite apart from the FDOT's bureaucratic arrogance and its heavy-handed attempt at intimidating citizens who challenge FDOT's sloppy permitting practices, it is, at the very least, an inefficient and wasteful use of DOAH's limited resources, and the resources of the parties, to hold a hearing on a construction permit for a bridge based on a design decision that has been stayed pending a judicial decision on whether to reverse the FDOT's design decision.

13. Counsel of Record for Respondents SWFWMD and FDOT have been contacted and do not agree to this motion.

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WHEREFORE, Petitioners respectfully request that the Administrative Law Judge enter an order continuing the final hearing and stay all other proceedings in this case pending the issuance of the mandate of the First District Court of Appeal in City of Sarasota, Florida & Bridge Too High Committee, Inc. v. FDOT, 1st DCA Case Nos. 1D00-609 and 1D00-644.

Respectfully submitted,

DAVID M. LEVIN, ESQ.
Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.
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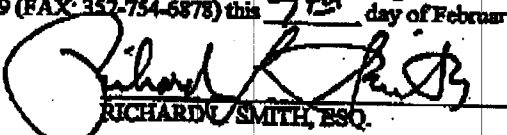
- AND -

RICHARD L. SMITH, ESQ.
Nelson & Hesse
2070 Ringling Blvd.
Sarasota, FL 34237
(941) 366-7550
Fla. Bar No. 169636
Attorneys for Petitioners

BY: 
RICHARD L. SMITH, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail and Facsimile to Robert C. Downie, II, Assistant General Counsel, Florida Department of Transportation, 605 Suwannee Street, Tallahassee, Florida 32399-0458 (FAX: 850-488-4412) and Jack Pepper, Assistant General Counsel, Southwest Florida Water Management District, 2379 Broad Street, Brooksville, FL 34609 (FAX: 352-754-6878) this 7th day of February, 2001.


RICHARD L. SMITH, ESQ.

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OFFICE OF GEN. COUNSEL Fax: 8504884412

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Florida Department of Transportation

JESSE
GOVERNOR605 Suwannee Street
Tallahassee, Florida 32399-0450THOMAS F. BAREX, JR.
SECRETARY

February 5, 2001

VIA FACSIMILE TRANSMISSION and U.S. MAIL

Richard L. Smith, Esq.
Nelson Hease
2070 Ringling Boulevard
Sarasota, Florida 34237RE: Bridge Too High Committee et al. v. SWFWMD and State of Florida
Department of Transportation, DOAH Case No. 00-4827

Dear Mr. Smith:

Thank you for taking the time this morning to discuss several matters in the above-referenced case. As a brief summary, it is my understanding that your clients have agreed to respond to the Department's Second Interrogatories by either filing objections by February 12, 2001, or filing answers by February 14, 2001. In addition, you are checking on the availability of the named Petitioners for depositions on February 9, 2001, or February 12, 2001. Please let me know by 12 p.m. tomorrow whether we will be scheduling depositions for either or both of those days (If I do not hear from you I will ask Judge Johnston for an emergency status conference for the purpose of scheduling depositions). In regard to mediation, I have advised you that the Department is willing to engage in this form of dispute resolution if your clients are interested. In order to give all sides a stake in the outcome of that process, I propose that costs of mediation be split pro rata. The Department would prefer to mediate at least one day before our pre-trial conference set for February 19, 2001.

Finally, as I mentioned to you, the requested admissions which your clients denied mean that a wide range of issues are present in this case. In the event that the Department's Motion to Relinquish Jurisdiction is denied, I want to memorialize the fact that we discussed that the Department has hired and expects to pay expert witnesses in this case and will likely incur costs in the ten of thousands of dollars. If the Department successfully proves the truth of admissions denied by your clients, the Department will seek to recover those costs, including attorneys fees, as a part of this case.

Sincerely,

Robert C. Downie, II
Assistant General Counsel
(850) 414-5285

414-5286 (direct number)

RCD/lbs

cc: Jack Pepper, Esq.
David Levin, Esq.

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRIDGE TOO HIGH COMMITTEE,)
INC.; DR. and MRS. LAURENCE)
LUDWIG; RICHARD ANGELOTTI; and)
MR. and MRS. LOUIS VOSE,)

Petitioners,)

vs.)

Case No. 00-4827

SOUTHWEST FLORIDA WATER)
MANAGEMENT DISTRICT and)
DEPARTMENT OF TRANSPORTATION,)

Respondents,)

and)

GOOD BRIDGE 2000, INC. and TOWN)
OF LONGBOAT KEY,)

Intervenors.)

ORDER GRANTING INTERVENTIONS,
ALLOWING WITHDRAWAL OF ADMISSIONS,
DENYING RELINQUISHMENT OF JURISDICTION, AND DENYING CONTINUANCE

With the consent and participation of all parties, a
telephone hearing was held yesterday on all pending motions.

Based on the written and oral arguments, it is

ORDERED:

1. Subject only to the ruling on any timely motion(s) to
dismiss filed by Petitioners under Florida Administrative Code
Rule 28-106.204(2), the Petition for Leave to Intervene By Good
Bridge 2000, Inc. (Good Bridge), filed on February 5, 2001, and

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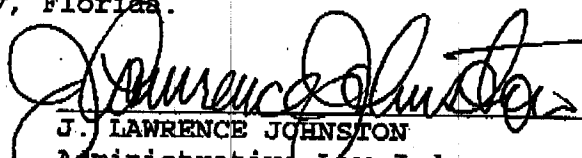
the Petition for Leave to Intervene By Town of Longboat Key (Longboat Key), filed on February 7, 2001, are granted to the extent that leave is granted to Good Bridge and Longboat Key to intervene and participate as parties to this proceeding, and the caption is amended as shown above.

2. Petitioners' Motion to Allow Withdrawal of Default Admissions, filed on February 2, 2001, is granted.

3. Department of Transportation's Motion to Relinquish Jurisdiction, filed on January 30, 2001, is denied.

4. Petitioners' Motion to Continue Final Hearing on SWFWMD Bridge Construction Permit Based on Stay of Bridge Design Decision, filed on February 7, 2001, is denied.

DONE AND ORDERED this 9th day of February, 2001, in Tallahassee, Leon County, Florida.


J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of February, 2001.

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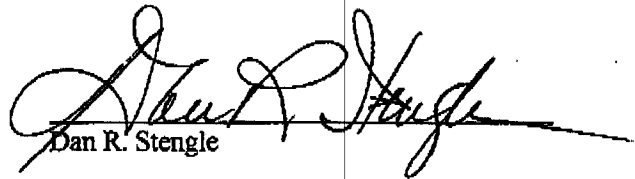
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I HEREBY CERTIFY that a true copy of the attached PETITION FOR WRIT OF PROHIBITION TO EFFECTUATE THE AUTOMATIC STAY DURING THE PENDENCY OF APPEAL PROCEEDINGS BEFORE THE FIRST DISTRICT COURT OF APPEAL has been furnished by U.S. mail and facsimile to Honorable J. Lawrence Johnston, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32301-3060 (FAX: 850-921-6847), this 14th day of February, 2001.


Dan R. Stengle

cc: Robert C. Downie, II
Jack Pepper
David P. Persson/Andrew H. Cohen
Henry P. Trawick
Marianne A. Trussell

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