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By Randy Schultz

Atlantic Crossing: time for a deal?

A federal judge finally may have compelled the developers of Atlantic Crossing to stop paying lawyers and cut a deal with Delray Beach.

Last week, U.S. District Judge Donald Middlebrooks granted the city's motion to dismiss the lawsuit that sought \$40 million in damages from what Atlantic Crossing claimed was a conspiracy to withhold final approvals for the mixed-use project west of Veterans Park. Middlebrooks kicked the case back to state court, where Atlantic Crossing is not seeking monetary damages.

Atlantic Crossing can't amend its complaint and try again with Middlebrooks. The developers could go to the 11th U.S. Circuit of Appeals, but that might take as long as a year, and Atlantic Crossing would face long odds. If the developers tried to amend the complaint in state court, Delray Beach surely would oppose that.

The issue remains an access road to the project from Federal Highway. A two-way road was in the original site plan, but it wasn't in the version the city commission approved in January 2014. A previous city commission approved the project in December 2012.

Even the harshest critics of Atlantic Crossing understand that the developers will build something on those two blocks north of Atlantic Avenue. This commission can't undo that 2012 approval. The city's priority has been to make Atlantic Crossing as compatible as possible. That means easing the traffic impact.

A year ago, when an agreement on that access road seemed possible, the commission tied itself in knots trying to decide which sort of road would work best. The city hired a consultant, who concluded that a one-way road actually would be more helpful than a two-way. The commission, however, never blessed any option.

The turning point came in April, when the commission could have approved the one-way road. Instead, Mayor Cary Glickstein and commissioners Mitch Katz and Shelly Petrolia rejected it. The problem wasn't just that it would have been a one-way road. Glickstein said the road would have looked more like a "service alley." The commission's action started the city and the developers on a schedule that could have led to a trial in October with much at risk for the city.

Almost certainly, that risk is over. Credit the city's outside counsel—**the Fort Lauderdale firm of Weiss Serota Helfman Cole & Bierman. Matthew Mandel, chairman of the firm's litigation division**, understated when he called Middlebrooks' ruling "a very positive development" in an email to the commission.

So what happens now? From my conversations, I don't sense much desire among the commissioners for Delray Beach to reach out. That's no surprise. For now, Atlantic Crossing is in the far weaker position because of Middlebrooks' ruling, so the city would be more likely to wait for an offer. I would expect the commission to discuss the issue in an executive session—closed to the public—before the Aug. 16 meeting.

As for Atlantic Crossing, Edwards Companies Vice President Don DeVere issued a noncommittal statement after Middlebrooks' ruling. Because Edwards bought the Atlantic Crossing site in June from CDS Holdings—Carl DeSantis—there's no longer any doubt about who is making the decisions. It's the developer out of Columbus, Ohio, that has mystified Delray Beach officials with its seeming preference for litigation over negotiation.

I'm told that state cases like this can drag on for months, even years. Atlantic Crossing would have enough issues to work out with the city—underground parking—while getting all its permits. Why not revert to the 2009 plan with the two-way road?

Bruce Leiner, whose Harbour House condominium lost a state case against Atlantic Crossing, told me that he would be fine with the 2009 plan. "The property owner has rights," Leiner said. Regarding that city consultant favoring the one-way road, Leiner said the consultant worked off a site plan that Atlantic Crossing could improve.

Delray Beach's lawyers just won big. There seems no reason, however, for only lawyers to keep winning on Atlantic Crossing.