



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: May 22, 2000
TO: Division of Records and Reporting
FROM: Division of Legal Services (Van Leuven) *DLV*
RE: Docket No. 000277-WS - Application for transfer of facilities and Certificates Nos. 353-W and 309-S in Lee County from MHC Systems, Inc. d/b/a FFEC-Six to North Fort Myers Utility, Inc., holder of Certificate No. 247-S; amendment of Certificate No. 247-S; and cancellation of Certificate No. 309-S.

Please file the attached Objection dated May 18, 2000, in the docket file for the above-referenced docket.

DTV/dm

cc: Division of Regulatory Oversight (Johnson, Redemann)

1\000277FM DTV

APP _____
CAF _____
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Done 5/30/00

DOCUMENT NUMBER-DATE

06310 MAY 22 8

PROC-RECORDS/REPORTING

19799 Frenchman's Ct.
N.Ft.Myers, FL 33903
May 18, 2000

Mr. Joe Garcia, Chairman
Florida Public Service Commission
2540 Shumard Oaks Boulevard
Tallahassee, FL 32399-0850

MAY 22 2000

Dear Mr. Garcia:

As concerned residents living in a community now serviced by North Fort Myers Utility, Inc., we are not convinced that the transfer of Certificates 253-W and 309-S is in the best interests of our community.

Your office received by E-mail dated Saturday, April 1, 2000, subsequently backed up by a letter transmitted by United States mail, an objection to the subject transfer lodged by Alexander William Varga (see attached). This letter is to certify that the Board of Directors of the Pine Lakes Estate Homeowners' Association, representing two hundred and eighty-one (281) Estate properties, stands behind Mr. Varga's objection to this transfer.

Our objection is based on the negative publicity concerning NFMU, Inc., including its potential bankruptcy, and the fact that its purchase by Lee County has been put on indefinite hold, and is accompanied by the following statements from various other communities made at the 4/28/00 InterPark Council meeting:

1. Buccaneer – residents are withholding payments to NFMU due to legal issues currently pending in court. (Joe Devine)
2. Lake Arrowhead – improprieties in the change from on-site sewer facilities to the NFMU were settled in court in favor of the residents. (Paul Coggins)
3. Tamiami Village – NFMU bills were consistently late, currently two months behind. (Marianna Schwabe) Inconsistency in when bills were received was confirmed by Lake Arrowhead.
4. Six Lakes – a resident-owned community, requested NFMU take over their sewage disposal after Lee County politicians, the Environmental Protection Agency and the Department of Health all participated in imposing huge and costly improvements. (Bard Rupp)

We honestly do not believe that the transfer of the subject certificates is in the best interest of our community. We implore the Public Service Commission to reject this transfer as a safeguard for the preservation of the rights of all Pine Lakes Estate HomeOwners.

If this plea falls on deaf ears at the Commission, please advise us as to who will protect them if and when NFMU applies to you for exorbitant rate increases? Who will protect them if NFMU does indeed become bankrupt and walks away from its obligations? Who will protect all of us from over-zealous community owners coupled with suspect county board politics? Will the Public Service Commission stand up for our residents? We certainly hope so.

Sincerely,



Leon J. Beekman, President
Pine Lakes Estate HomeOwners' Association

cc: J. Terry Deason, Commissioner FPSC
✓ Tyler VanLeuven, Attorney FPSC
Martin Friedman, Attorney Rose Law Firm
North Fort Myers Utility, Inc. – Ft. Myers address
FFEC-Six – Clearwater address
Senator Lisa Carlton
Representative Greg Gay
John Albion, Chairman Lee County Commissioners
Andrew W. Coy, Lee County Commissioner
Donald D. Stilwell, Lee County Manager
Bruce T. Grady, Mayor Fort Myers
Solid Waste Division, City of Fort Myers
Charles Liedtke, Lee County Examiner
J. Fenton, Ft. Myers News-Press
WBBH-TV
WINK-TV
Jermaine Troiano, President Pine Lakes HomeOwners II
Rudi Hermann, President Lake Fairways Homeowners
Ed Shone, President Lake Fairways Estates
Alexander William Varga

Subj: COUNTY WANTS TO BAIL OUT UTILITY
Date: 3/31/00 12:23:05 PM Pacific Standard Time
From: Crabfishes
To: contact@psc.state.fl.us
CC: webmaster@cityftmyers.com
CC: jfenton@fortmyergannett.com, nbc2news@nbc-2.com
CC: winknews@winktv.com, L.Beek@juno.com

To: Florida Public Service Commission,

According to an article in the March 29, 2000 Lee County EXAMINER, I quote:
"The Lee County Board of County Commissioners voted to investigate the possibility of purchasing N. Ft. Myers Utility, Inc. (NFMU) for \$59.5 million. This would be the second sewer utility purchased by the county in less than one year.

NFMU reported losses of over \$600,000 in their last annual report to the Florida Public Service Commission. NFMU currently has 9,150 sewer customers in N. Ft. Myers, making the purchase price of \$6,503 per customer".

I urge you to read the balance of the article in the above cited issue. How is it possible for this mismanaged, and bankrupt utility to purchase the water and wastewater utility facilities of MHC Systems, Inc. d/b/a FFEC-Six (As of March 1, 2000) serving over 1,700 residences in the Pine Lakes Country Club and the Lake Fairways Country Club? This sale will more than likely place these two communities in both financial and physical jeopardy. I believe that the governments of both Lee County and the City of Fort Myers have a responsibility to protect its citizens from this flagrant disregard of the public health and safety.

(Note: They residents of Pine Lakes Country Club were notified of this transfer of ownership by NFMU with an undated letter attached to a NOTICE OF APPLICATION, etc., dated March 7, 2000. I hereby, file an objection to the said application (within the 30 days required) to the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oaks Boulevard, Tallahassee, FL 32399-0850). It is hoped that E-Mail will serve as legal notice. In any event, a copy of this E-Mail will be forwarded by U.S. Mail to the PSC and the applicants attorneys).

Alexander William Varga
Pine Lakes Country Club, 19808 Frenchman's Court, North Fort Myers, FL 33903

cc: Fort Myers Department of Water and Wastewater
cc: Lee County Examiner
J. Fenton The News Press
WBBH-TV NBC Television News
WINK-TV CBS Television News
Leon Beekman - President, Pine Lakes Estates Homeowners Association, Inc.

Lee County EXAMINER

FREE

"with a free press everything is correctable, and without... concealable"

North Fort Myer's Community Newspaper

VOLUME 5, NUMBER 05 CALL 656-5569 FAX 656-5595 <http://www.cyberstreet.com/examiner/>

MARCH 29, 2000

COUNTY WANTS TO BAIL OUT UTILITY

The Lee County Board of County Commissioners voted to investigate the possibility of purchasing N. Ft. Myers Utility, Inc (NFMU) for \$59.5 million. This would be the second sewer utility purchased by the county in less than one year.

NFMU reported losses of over \$600,000 in their last annual report to the Florida Public Service Commission. NFMU currently has 9,150 sewer customers in N. Ft. Myers, making the purchase price of \$6,503 per customer. Since the county will bond the purchase, figuring a 20 year bond, with interest will double the purchase price to \$119 million, and assuming each customer has an average sewer bill of \$50 per month, with the current customer base it will take the county 21.6 years to pay off the purchase, assuming no operating costs.

NFMU has been in constant legal battles for the past ten years. Beginning in the early 90's when they attempted to get county government to build a sewer system in N. Ft. Myers and force the residents to connect. That was defeated by a citizens organization called FAST, Fair Assessment of Sewer Taxes.

Since then, NFMU has been involved in court case after court case concerning the legalities of forcing residents in manufactured home parks to connect to NFMU. In the case of Windmill Village, County Public Works Director admitted in a deposition he condemned their package sewer plant only upon the request of an attorney friend.

NFMU went out of their franchise area to connect to Buccaneer Estates. That case is under appeal in the First Circuit Court of appeals.

Tony Reeves, Vice President of NFMU is an employee of J.W. French, County Public Works Director, as a manager for Gulf Environmental Services, a water and sewer utility in south Lee County.

Commissioner Andrew Coy threatened to sue Mr. Joseph Devine, President of Buccaneer Estates Homeowner Estates Association (BHOA) over his remarks at the Board of County Commissioners on March 14, 2000. Both Mr. Devine and Mr. Don Gill of Buccaneer Estates attended the meeting because the preliminary steps to buy-out N. Ft. Myers Utility, Inc., (NFMU)

which assumed on its own the sewer service for that park in 1998. Since then, the take-over has been, and still is, in litigation.

Three residents, Mr. Gill, Mr. Devine, and Mr. Ron Ludington have taken pro se this matter of the extension of NFMU to the Public Service Commission and now to the First Circuit Court of Appeals. NFMU admits that it made a "mistake" in assuming control of the sewer service in a deal with Manufactured Homes Communities (MHC) and was subsequently fined for the "error". Currently, Lake Fairways Park, another MHC park, is going through a similar situation.

At the BOCC meeting Mr. Devine spoke to the campaign contributions given to Commissioner Coy by J.W. French, Lee County Public Works Director and partner of Anthony Reeves, III, another contributor to Coy and vice-president of NFMU. Also on the list is Attorney Martin Friedman representing NFMU before the PSC, Attorney Frank Aloha, Jr., who represents Manufactured Home

cont. pg 6

SEWER

Communities, and Attorney Adamski, a partner of Rober Burandt, who has represented BHOA. Mr. Devine asked Coy to remove himself from voting on this issue, which he did not.

Mr. Gill announced to the BOCC that the case is now before the First District Court of Appeals and reminded the group that NFMU is in debt from not collecting any monies from Buccaneer Estates residents since 1998.

Both facts had been discussed at the Homeowners meeting the previous night and therefore a group of residents came to the meeting to present their opinions.

Immediately before the BOCC meeting another resident, Mr. Charles Connors found and had been able to speak to Mr. Coy in his office before the Commissioners meeting to see what Mr. Coy was going to do at the meeting. Mr. Connors repeated the opinion that the NFMU take over was illegal on several fronts. Mr. Connors was told by Coy that he would sue Mr. Devine for divulging the contributions information.

Later in the week Mr. Connors did stand by the fact that Mr. Coy threatened to sue Mr. Devine for saying his list of contributors, which is available to anyone at Lee County Elections or over the internet.

Mr. Coy told Mr. Devine in a telephone conversation after the BOCC meeting that he never did threaten to sue him. A meeting of Mr. Devine and Mr. Gill with Coy was arranged for this week to include Lee County attorneys and Public Works department officials.

At that meeting, attended by Lee County Attorney David Owen and Larry Johnson from Lee county Public Works, Devine outlined the appeal which the BHOA had filed.

When Lee County purchased Florida Cities Water Company, Inc., last year, Lee County attorneys were not aware of at least one outstanding lien against FCWC which cost the county \$2,000.

NEWS-PRESS
4/2/00

Lobbyist's utility ties undisclosed

Lee works director assumed county knew

By LEE MELSEK
The News-Press

A powerful lobbyist with close ties to Lee County commissioners is getting hundreds of thousands of dollars worth of business from a public official who failed to disclose the arrangement.

Fort Myers attorney James

Garner, who contributes money and advice to commissioners at election time, is involved in deals that raise questions about conflicts of interest and undisclosed business relationships.

An investigation by The News-Press found Garner connected to Catalina Group, a Coral Gables corporation that

wants \$825,000 to help the county buy North Fort Myers Utility, a sewer system serving 9,100 customers.

Catalina's two officers work for Garner, one as a secretary, the other as a government relations specialist.

Garner and his former law firm represented the utility in 1999 at the same time Catalina began representing Lee County in the sale negotiations.

If approved, that deal will

cost water and sewer customers more than \$100 million.

Garner and his connections to both sides in the utility negotiations could attract the attention of the Florida Bar's ethics department.

The North Fort Myers Utility deal is the second time since 1998 Garner has enjoyed a lucrative role in the county's push to buy utilities.

At that time, Garner got between \$350,000 and



GARNER

\$532,000 in fees for brokering another utility company deal for \$43 million.

Officials are unable to produce records showing what he did to earn

that fee.

Two of his clients also earned hundreds of thousands

of dollars in fees for helping with the purchase. One client got a no-bid contract worth more than \$3 million.

Lee County Public Works Director J.W. French, the county's point man for buying utilities, didn't reveal Garner's Catalina connection even though he knew its officers worked for the attorney.

"That's the business entity

See LOBBYIST / 6A

LOBBYIST: Commissioners, cou

From Page 1A

he wanted to do this under," French said.

Asked why he didn't tell commissioners or his boss, County Manager Don Stilwell, of Garner's involvement, French said he assumed they knew. "I find it hard to believe they didn't know," he said.



STILWELL

Yet Stilwell and commissioners insist they did not know what Garner was doing in the North

Fort Myers deal.

Stilwell, who has regular briefings with French and other department heads, said he has been left out of the loop. He could not answer questions about Garner's involvement or why French did not tell him.

"No one has asked me if I should or should not be involved," Stilwell said. "If someone is getting an unfair advantage in negotiating these things, I would be concerned. So far, I haven't seen any improprieties."

Commissioners say French should have told them about Garner's Catalina ties.

Catalina President Cathleen Vogel, who is from Coral Gables, was Garner's government relations specialist when he worked at the Fort Myers law firm of Pavese, Garner, Haverfield, Dalton, Harrison and Jensen. He kept her on when he moved in January to his new firm, Annis, Mitchell, Cockey, Edwards and Roehn of Fort Myers.

Catalina's secretary and treasurer, Esther Childs, is Garner's secretary.

"I'm an entrepreneur. I have done nothing improper," Garner said.

Garner refused to answer questions when asked about Catalina. He said he wanted future questions in writing.

Childs also would not answer questions about her involvement in Catalina, saying Garner told her to ask for the questions in writing.

Vogel could not be reached for comment.

Possible breach of ethics

Garner's representation of the county in the North Fort Myers Utility deal may violate the Florida Bar's ethics code.

That's because the attorney and his former firm represented the utility as recently as 1999, according to Frank Pavese, the head of the firm.

Garner started representing the county in September.

A Florida Bar spokesman said a lawyer who represents one client in a

deal with another client must disclose his representation to both sides and get their permission to continue.

Garner did not tell commissioners North Fort Myers Utility was a client.

French said Garner told him he did not represent the utility.

At first, Garner denied he ever represented the utility. He later said he represented the firm about two years ago.

French said that was about the time Garner asked him if the county was interested in buying North Fort Myers Utility.

Lobbyist disclosure records for Garner's former law firm show he represented the utility in 1997, 1998 and 1999.

Pavese confirmed that.

The \$825,000 fee Catalina wants would come from bonds commissioners would issue to pay for the \$59.5 million purchase. The bond debt with interest would top \$100 million and would be paid for by utility customers.

Pavese said he can understand how people might question Garner's roles. "I don't think it's a conflict that the Florida Bar would look at, but it does have the appearance of a conflict, I'll admit that."

French had many chances to tell commissioners and Stilwell about Garner's role but he didn't.

Instead, French asked the commission Sept. 7 to hire Catalina to negotiate for the county.

Although it was the first time the county had done business with Catalina, commissioners did not ask questions about the firm, its history, its experience or who owned it. They approved it without discussion.

After The News-Press questioned Garner's role in the utility deal, county officials called the attorney before the commission March 14. At that time, he revealed he has been the county's negotiator since September.

Garner at that point had an opportunity to reveal his Catalina ties but didn't. Instead, he told the board Catalina hired him to negotiate.



ST. CERNY

Commissioners are concerned they weren't told more. "We should have been made more aware of everything that was going on," Commissioner Andy Coy said. "I'm sure there's going to be a lot of scrutiny on this now," Commissioner Doug St. Cerny said. "The public has a right to know who we are dealing with."

"That's government in the sun-

CAST OF CH

JAMES GARNER

A Fort Myers attorney with close ties to county commissioners. He represented the county commission in discussions to buy North Fort Myers Utility at the same time his former law firm represented the utility.

CATALINA GROUP

A Coral Gables corporation that wants \$825,000 to help the county buy North Fort Myers Utility. Garner is representing the company. Catalina's two officers work for Garner, one as a secretary, the other as a government relations specialist.

J.W. FRENCH

Lee County Public Works Director and the county point man for buying utilities. He didn't reveal Garner's Catalina connection even though he knew its officers worked for the attorney.

DON STILWELL AND COUNTY COMMISSIONERS

The county manager said he was left out of the loop and was never told of Garner's association with Catalina Group. County commissioners also said they weren't aware of the situation.

shine. I think there needs to be an awful lot of questions asked of Mr. French about all of this. This should all be brought out, and I will be one of those asking the questions."

French's actions also raise questions because of his own association with Garner.

French owes his appointments to the boards of two nonprofit corporations to Garner. One is the Florida Water Council Inc., a think-tank Garner created to monitor legislation on water issues.

The other board is a water and sewer company Garner and one of his clients created in a public-private partnership with the county.

French already was associated with Vogel when he handed Catalina the negotiations job on North Fort Myers Utility last September. She works for the Florida Water Council.

French said he let Garner pursue the utility for the county because the attorney came to him asking if the county was interested in the deal.

Other Florida counties use competitive bidding processes to pick

nty manager weren't informed

CHARACTERS

ESTHER CHILDS

Catalina's secretary and treasurer, and Garner's secretary

CATHLEEN VOGEL

Catalina's president. She's from Coral Gables, and was Garner's government relations specialist when he worked at the Fort Myers law firm of Pavese, Garner, Haverfield, Dallon, Hamson and Jensen. He kept her on when he moved in January to his new firm, Annis, Mitchell, Cockey, Edwards and Roehn of Fort Myers.

A.A. REEVES

An employee of another Garner client, he received \$168,000 as a consultant. He is the operator of North Fort Myers Utility, the firm Garner now is trying to buy for the county.

After the Gulf purchase, Reeves also became general manager for Gulf Environmental Services in addition to his work for North Fort Myers Utility.

SEVERN TRENT ENVIRONMENTAL SERVICES

A Garner client that benefited from the purchase of Gulf Utility by getting the contract to run the system for five years without having to bid for it.

negotiators when buying utilities.

In St. Johns County in northeast Florida, Public Works Director Bill Young is planning to create a negotiating team for a utility purchase. He said he wouldn't give the job to the first person who came to him with a deal.

"There may be some self-interests there and we wouldn't want to create the perception that someone is brokering a deal just so they can come out ahead on it," Young said.

Deal benefited Garner client

Garner's bearded face and drawl are fixtures in county offices where decisions are often made on major issues prior to public meetings.

Garner has political and personal relationships with the commissioners he regularly seeks concessions from, mostly on behalf of development interests.

Commissioners have turned to Garner for help in the past.

In 1991, Garner was the board's negotiator when commissioners decided to fire County Manager Marsha

Segal-George. He represented the board in buying out her contract.

In 1994, Garner was co-chairman of St. Cerny's re-election campaign. Garner has entertained St. Cerny and his wife at his home in The Forest south of Fort Myers.

The North Fort Myers Utility deal is not the first time French helped Garner land a lucrative role in bringing a private utility company into public hands.

Garner got at least \$350,000 for helping the county put together the \$43 million purchase of Gulf Utility company in 1998. The system provides water and sewer service to 8,500 homes and businesses in San Carlos Park and Estero.

The county will eventually assume control of the company and its \$114 million in debt to bondholders but officials aren't sure when that will be.

That deal also raises questions about conflicts.

As a result of the sale, Garner's client, Severn Trent Environmental Services, benefitted from the purchase by getting the contract to run the system for five years without having to bid for it.

Stilwell said he also was left out of the loop in the Gulf purchase and doesn't know why.

French guided the commission's approval of the Gulf purchase. Garner appointed French to the board of directors of the nonprofit company created to run it — Gulf Environmental Services.

French said he doesn't get paid to serve on the board.

The company floated a \$53 million bond issue to buy the utility. The bonds will be paid back by Gulf's water and sewer customers.

Garner's fee for putting the deal together was taken from the bond money.

Records differ on what Garner earned.

The bond underwriters on the deal, A.G. Edwards, show Garner and his former firm received \$350,000. A Tallahassee law firm that also worked on the deal produced records showing Garner and his former firm got \$532,000.

Garner said he got \$350,000.

Neither French nor the corporation could produce any records to show how much time and effort Garner spent on negotiations.

Garner's client, Severn Trent, received \$400,000 for helping with the purchase.

Garner and French also gave Severn Trent the contract to run the water and sewer system. Between July 1998 and February 2000, Severn Trent was paid \$3 million for its services.

The employee of another Garner client got \$168,000 as a consultant.

That money went to A.A. Reeves, the operator of North Fort Myers Utility, the firm Garner now is trying to buy for the county.



FRENCH

After the Gulf purchase, Reeves also became general manager for Gulf Environmental Services in addition to his work for North Fort Myers Utility.

About the same time French and the commission approved the 1998 Gulf purchase, French said Garner began asking him if the county would like to buy North Fort Myers Utility.

At the time, the utility's owners weren't ready to sell, French said.

Garner persisted, and the owners finally let him put together a proposal.

The commission has asked its financial advisers to look at the deal but hasn't approved the price.

Although Garner told commissioners March 14 Catalina was involved in utility company purchases in North and South America, he refused to answer a reporter's questions about Catalina's background, provide the names of its clients or the names of anyone associated with the firm.

French and the commission haven't asked him to do so.

Stilwell said he assumed French and Garner briefed commissioners on the company.

Despite issues raised by Garner's role in the North Fort Myers acquisition, commissioners did not question him at the March 14 meeting.

French said Garner told him he had no conflict with North Fort Myers Utility. "He looked me right in the eye and said he doesn't represent them," he said.

Told that Pavese said Garner represented the company in 1999, French said, "It looks like there's two different stories."

French hasn't called Pavese to inquire further about Garner's involvement with the utility.

Meanwhile, county attorneys are reviewing Catalina's request for \$825,000 in fees if the county buys North Fort Myers Utility.

Commissioner Ray Judah said the board needs to take a hard look at that contract and its fee.

"All of this information should have been made available to the board. But it looks like now we have time to look at this contract before we go and approve \$825,000," Judah said.

— Lee Melsek can be reached at 335-0386.

Lee director helped inflate utility value

Public works head forced residents to hook into sewer

By LEE MELSEK
The News-Press

Lee County's public works director helped a lobbyist force low-income residents to hook into a North Fort Myers sewer system and pay hundreds of thousands of dollars to the lobbyist's client.

J.W. French ordered residents of the Windmill Village Mobile Home Park to connect

to the North Fort Myers Utility sewer system in 1997. He signed the order less than a month after lawyers for the park's owners accused the utility of trying to bully them into connecting to its system.

French's action increased the value of North Fort Myers Utility by adding nearly 500 new connections to the system, just before the county was asked to buy it for \$59.5 million.



FRENCH

French's order forcing the residents to connect conflicted with the assessment of another county official that the park's sewer system had always been fixed promptly when there were problems.

In addition, state regulators — who were monitoring the park's sewer system — already gave park owners the option of hooking into another system or fixing their own.

But French, at the urging of North Fort Myers lobbyist James Garner, got involved by sending letters to park officials, eventually forcing them to connect to North Fort

Myers Utility.

French later admitted in a sworn statement that his action at Garner's request was the first time to his knowledge the county ever used a nine-year-old ordinance to force a mobile home park to hook into a central sewer system.

French's action cost the park's nearly 500 homeowners \$462 each in connection fees. Residents sued the park own-



GARNER

ers and will be reimbursed.

Lee County Manager Don Stilwell vowed Friday to ask Lee County Circuit Court Clerk Charlie Green to perform an operational audit of French's actions in the Windmill Village matter and in the public work director's other dealings with Garner.

Among other things, Stilwell said he wants answers as to why French did what Garner wanted him to in the Windmill Village matter and why he failed to disclose the lobbyist's involvement with the county in another utility issue.

The News-Press revealed

last week that French failed throughout 1999 and this year to disclose Garner's involvement as the county's negotiator in its efforts to buy North Fort Myers Utility, which he had represented since 1997.

Garner and a company headed by two of his employees wanted \$825,000 to negotiate the purchase for the county.

Commissioners and Stilwell said they had no idea of Garner's involvement in that deal.

On Tuesday, commissioners

See DIRECTOR / 8A

DIRECTOR: French used county stationery to write Windmill residents

From Page 1A

cut their ties to Garner and Catalina Group Inc. by voting not to go ahead with the purchase.

"I want to know what the basis was for his decisions in the Windmill Village thing and for not telling of Garner's involvement in the North Fort Myers Utility purchase," Stilwell said Friday.

"This is a serious matter and a high priority for me. These things all raise questions I want some answers to. Clearly, his actions raise all kinds of flags."

Commission Chairman John Albion asked Stilwell to order French to resign from the boards of two non-profit corporations Garner appointed him to, but Stilwell declined.

"That would make him look guilty. People would think since I ordered him to get off those boards he must be guilty of something. That's not fair," Stilwell said.

Commissioner Andy Coy said he also plans to talk to Stilwell about French's actions.

"Mr. French shouldn't have written those letters for someone else. It just looks inappropriate," Coy said.

Demands got stronger

Garner first got French to agree to

help him in the Windmill Village matter during a 1997 flight they took together to the east coast, records show.

French — who is one of the county's top administrators and earns \$111,000 a year — said he did what Garner wanted. He wrote a letter to park owners telling them they might be required to close their plant and hook into the sewer lines of North Fort Myers Utility.

"I asked Mr. French if he could be helpful," Garner said.

The park's owner, Manufactured Home Communities, later wrote a second, much stronger letter ordering residents to connect and sent it to French.

French put the letter on Lee County government stationery, signed it and sent it back to the park's owners, court records show.

That way, with the letter coming from French, park owners could call the letter a government mandate and pass on the connection fees to homeowners.

Park owners later backed down after residents sued over the connections costs. That suit was recently settled and park owners will reimburse residents who have already paid the fees.

The 491 new connections were

"I think what French did was really underhanded. They were helping each other and we were paying for it."

— Gloria Tomich,
Windmill Village resident

completed about the same time Garner began pressing French to buy the utility.

"I think what French did was really underhanded. They were helping each other and we were paying for it," said Windmill Village resident Gloria Tomich. "It was one of those you-rub-my-hand-and-I'll-rub-your-hand deals."

Tomich said many residents in her park are elderly with only Social Security as an income.

Commissioners Coy and Ray Judah said revelations about the French and Garner connections cast a cloud over the negotiations and created the perception of questionable conduct. The commission action prevents Garner and Catalina from collecting the fees.

Commissioners said last week

they also had no idea French sent the threatening letters to Windmill Village on behalf of Garner.

French changed story

French's actions in the Windmill Village issue are described by him and others in documents filed in the lawsuit against the park owners.

Under questioning from the residents' lawyer, Bob Burandt, French described how he and Garner started talking about Windmill Village.

"The essence of the conversation was Windmill Village was not in compliance with their permit and were going to be hooked up to North Fort Myers Utility and it wasn't clear who he was representing at the time. I assumed it was Windmill Village," French said.

But he was mistaken, Garner

representing the utility.

French initially gave a sworn statement in the park residents' lawsuit saying he was first contacted by Windmill Village officials about the letter. He later changed his sworn statement and said Garner asked him first for the letter.

French said he never asked Garner why he was interested in the matter or who he represented. He also said he didn't know anything about Windmill Village's sewer system or any problems it might have when Garner urged him to order the park to hook into his client's utility.

On Sept. 23, 1997, Garner sent a draft of a letter to French.

But French wrote a different letter on Oct. 2, telling park owners they could be required to hook into the North Fort Myers Utility sewer system.

That letter wasn't good enough for the park owners. They sent French a second letter, this one demanding the park hook into the system within one year. That's when he put the letter on Lee County government stationery, signed it and sent it back to the park's owners, court records show.

But documents show the park's own system never had the kind of

tors to be concerned enough to shut them down.

Lee County Utility Department Director Glenn Greer wrote a memo to French on Oct. 28, almost two weeks after the public works director sent the second letter demanding the park hook into the private utility company.

Greer said problems with the park's own plant were nothing that couldn't be fixed.

"Review of files indicated some problems with the plant itself, but these problems were corrected promptly. Based on limited review, it is difficult to conclude that the plant could not be brought into compliance through improved operations and maintenance."

French said he has since refused Garner's requests to demand other mobile home parks hook into North Fort Myers Utility sewer lines. He said he didn't like the idea his office was used to force the Windmill Village residents to pay the hookup fees.

"When I found that out, I told Jim I wasn't signing any more of those letters for him," French said. "I didn't mean for that to happen."

— Lee Melsek can be reached at 295-0296

Lee calls off utility purchase

Commissioners say lobbyist role makes 'perception horrible'

By MIKE HOYEM
The News-Press

Lee County commissioners called off negotiations to buy North Fort Myers Utility on Tuesday, citing the cloud of con-

troversy over the deal caused by an influential lobbyist's ties to the county and the company.

"The waters were too muddied. The perception was horrible," said Commissioner Andy Coy, who urged the commission to scrap the deal.

"If we move forward at this time with acquiring North Fort Myers Utility, I do not believe the community would be in favor of it."



GARNER



FRENCH

Commissioner Ray Judah said buying the system would "never be perceived as an

appropriate approach" even if the county got a good price.

The vote was unanimous.

Commissioners never directly mentioned lobbyist/attorney James Garner, but they said last week they had numerous questions about his role in the deal.

The questions surfaced during an investigation by The News-Press that revealed Garner is connected to the

Catalina Group, a Coral Gables corporation that wanted \$825,000 to help the county buy the utility.

Garner and his former law firm represented North Fort Myers Utility in 1999 at the same time Catalina Group began representing the county in the sale negotiations.

County public works Director J.W. French, who is the county's point man on utili-

ty purchases, has acknowledged he knew of Garner's connections to the Catalina Group. But he didn't reveal that relationship to commissioners or to his boss, County Manager Don Stilwell.

During Tuesday's commission meeting, Commissioner John Manning told French he had faith in French's honesty and integrity.

See UTILITY / 15A

UTILITY: No calls supported buy

From Page 1A

French said nothing as commissioners discussed the situation and voted to halt the negotiations.

Garner — who has said he's an entrepreneur who has "done nothing improper" — did not return telephone calls.

Garner's representation of both sides could attract the attention of the Florida Bar Association's ethics department.

An attorney who represents both sides must disclose that fact to the clients and get written permission from both. Garner never told commissioners North Fort Myers Utility was a client.

The investigation also raised questions about French's relationship with Garner because French owes his appointments to two non-profit corporations to Garner.

One corporation is the Florida Water Council Inc., a think-tank Garner created to monitor legislation on water issues. The other is a water/sewer company Garner and one of his clients created in a public-private partnership with the county.

The \$825,000 fee Catalina Group sought would have come out of the bonds commissioners would have issued to pay for the \$59.5 million purchase price of the utility, which has about 9,100 customers. The debt with interest would have topped \$100 million and would have been paid by customers.

Commissioners have a policy of trying to acquire private utility systems and make them part of the county system. They say it stabilizes prices and helps protect the county's long-term water supply.

Coy and Judah support that policy but were the most outspoken in favor of ceasing the negotiations.

"I can tell you I have not had one call telling us we should do this," said Coy, who represents North Fort Myers.

Chairman John Albion and Manning said it might be better to wait until a firm purchase price was offered before making a decision. But they eventually yielded to Coy and Judah.

Commissioner Doug St. Cerny said he'd go along with Coy because "you have to show respect to the district commissioner."

French said after the meeting he thought the commission's decision was reasonable.

"The district commissioner had a lot of calls saying, 'We don't want you to buy it' and no calls saying, 'We want you to buy it,'" French said.

He declined comment on Garner and the cloud of controversy mentioned by commissioners, saying the issue should not have been the subject of a newspaper story.

Stilwell told commissioners he believes the circumstances of the deal "raise that fear that something underhanded is going on."

But he said he resented the fact that the decision was being driven by "insinuations" and "suspicions."

"Our integrity is intact," Stilwell said.

County Environmental Services Director Larry Johnson said the county has invested some money in the deal, but the amount spent so far is "probably minor compared to what would have been spent on engineering and due diligence" investigating the acquisition.

— Mike Hoyem can be reached at 335-0391.

EDITORIAL

Utility deal should be investigated

Lobbyist actions raise questions about conflict

Whoever controls water and sewer services in a county controls the course of large developments.

In Lee County, that is supposed to be the Lee Board of County Commissioners.

Color them either asleep at the wheel or purposely closing their eyes to what's been going on down at Lee County Public Works.

Sunday's report by The News-Press on the 1998 purchase of privately owned Gulf Utilities and the proposed \$59 million purchase of privately owned North Fort Myers Utility casts doubt on who's running things down at the county administration building.

It certainly isn't the five commissioners.

It appears to be someone who has been called "the sixth commissioner," powerful Fort Myers lobbyist James Garner, who has a close relationship to the commissioners and to Public Works Director J.W. French, the county's point man in utility purchases



GARNER

As detailed in Sunday's report by The News-Press, Garner, one of Lee County's most prominent lobbyists for developers and other clients, represented both the North Fort Myers Utility and Lee County while negotiating the utility purchase on behalf of Lee County. To handle county negotiations, Garner used a company called Catalina Group, which is run by his employees.

Garner and some of his clients already had benefited from the county's recent purchase of Gulf Utilities.

Everybody from the Lee County Sheriff's Office to the Federal Bureau of Investigations to the Florida Bar ought to be investigating these deals, where the smell isn't coming just from the sewage flowing through Mr. Garner's clients' pipes.

Commissioners say they didn't know about the connections with Garner. That's pretty hard to believe, but if they didn't, why didn't they?

And why didn't they ask any questions when they had the opportunity?

Now they believe they've exonerated themselves by calling off the utility purchase. If they think running away from this deal now keeps their hands clean, they are wrong.

County Manager Donald Stilwell told the commissioners at Tuesday's meeting, "Our integrity is intact."

It isn't.

North Fort Myers residents, led by Joe Devine, for months begged their county commissioner, Andrew Coy, to look into improprieties in the utility deal. He responded that he'd try to get them a utility rate reduction.

Now, The News-Press has learned that the proposed Lee County Utility Franchise Map, which sets out where utility service is planned, extends the development boundaries set forth in the Lee County Comprehensive Plan.

Is this an accident? A coincidence? Or is it the lack of a clear policy and vision from a county commission that is happy to react to developers' requests but unwilling to plan?



STILWELL

Revelations of the past week make us suspicious that this utility franchise map is the result of something much worse.

The franchise map, which is drawn by county staff, is headed in a month to the Local Planning Agency for review. We'll be looking for some answers to these questions.

The awful shame here is that there are good reasons for Lee County to buy up the county's small private utilities.

Private utilities such as North Fort Myers and the former Gulf Utilities are regulated by the state's Public Service Commission; public utilities are regulated by the county commissioners.

Having utilities under public control has a number of advantages: There are economies of scale and required interconnections between utilities are easier to arrange. Raising money through bonding also is easier for public utilities, which can tap into public revenues. Water quality issues are easier to address, as is rate-setting.

County commissioners have ruined their credibility and set back the effort to provide quality water and sewer infrastructure in Lee County.

Inquiries target Lee utility deal

Circuit court clerk,
sheriff launch own
investigations

By **LEE MELSEK**
The News-Press

Two agencies are investigating Lee County government's multimillion-dollar dealings with sewer operators and a powerful lobbyist whose clients benefit from commission actions.

Sheriff John McDougall said he has asked for federal help in conducting his investigation.

Lee County Circuit Court Clerk Charlie Green also has begun an investigation.

McDougall said Monday his investigation already started by collecting county documents and will be lengthy and in-depth. It was triggered by stories in The News-Press about the actions of Lee County Public Works Director J.W. French on behalf of Fort Myers attorney and lobbyist James Garner.

Commissioners and County Manager Don Stilwell have denied any knowledge of

French's activities on behalf of Garner, who has been a major fund-raiser for commissioners' re-election campaigns over the past decade.

Commissioners and Stilwell claim they were kept in the dark on what French did for Garner.

"We are looking into possible misconduct and we've already started gathering records on matters pertaining to sewer contractors and sewer company purchases, the same thing your paper's articles looked at," McDougall said Monday.

Green is auditing the county's contracts with one of Garner's clients, Severn Trent Environmental Services.

That company runs county-owned water and sewer utilities. It won the five-year contract in 1995 when Garner represented the company and has been paid \$34.4 million since then to do the job.

Another water and sewer system operator represented by Garner, Azurix, is bidding against Severn Trent to take over the contract to run the county-owned utilities when the current contract ends in May. Sheriff's agents are expected to look into that ongoing bidding process as well.

McDougall, who has battled



MCDOUGALL

See INVESTIGATION / 4A

INVESTIGATION: Stilwell requested audit

From Page 1A

frequently with commissioners over the years trying to get bigger budgets than the county wanted to give him, said those fights had nothing to do with his decision to investigate county government.

"I will not use this office in a vendetta. That's not my style," McDougall said. "I am the sheriff of this county and I am going to look into all of this. The whole purpose of this is to either exonerate people or bring forward wrongdoing."

Stilwell requested Green's audit in the face of mounting revelations about French's failures to disclose to commissioners or the county manager his activities on Garner's behalf.

McDougall has created a four-man task force within his department to handle the investigation and has asked for help from federal officials in Fort Myers.

Assistant Managing U.S. Attorney Doug Molloy of Fort Myers refused to confirm or deny his office and the FBI will help McDougall's agents in the investigation.

In a letter to Molloy, McDougall asked for help in investigating "alleged straw corporations receiving large sums of tax monies and wrongdoings by public employees especially since several of the elected public officials have responded to this article by denying any knowledge of the matters disclosed in the article."

That part of the letter referred to a company that was until recently negotiating for the county on the purchase of North Fort Myers Utility.

The company, Catalina Group, has only two officers, both of whom are employed by Garner.

Although French knew that, he never told commissioners or Stilwell.

Commissioners called off the negotiations April 4 after The News-Press revealed Garner's relationship to the company. The firm wanted \$825,000 for negotiating the deal, which would have come from bond proceeds had

the purchase been made. The company won't be paid now that the negotiations have been ended.

McDougall's investigation will focus on relationships between county officials, Garner and utility companies and contractors.

Green's investigation will focus on Severn Trent's contract with the county and its budget, expenses and work change orders over the five years it has been the county's water and sewer services contractor.

McDougall said his men will keep a close eye on the audit Green's office does.

Green said Monday he may not be able to do some of the things Stilwell asked him to do.

Stilwell asked Green to find out if French has been doing favors for Garner and, if so, why.

"I don't think we can go very far with looking at relationships," Green said. "J.W. French can tell us he doesn't have to tell us anything. We can only go so far in looking at what J.W. does in his everyday job and dealings. Don Stilwell can do better with asking French those kind of questions. He has a lot more leverage with him than we do. He's his boss."

Investigation welcomed

French welcomed the investigation Monday.

"I will be glad to have them on it," French said. "I don't have any problems with them auditing or investigating."

Garner — who has insisted he's done nothing improper — couldn't be reached for comment Monday.

Commissioner Ray Judah said he is glad to see the investigation.

"I believe what is necessary at this point is the closest scrutiny that can be provided," he said.

Stilwell expressed surprise at the sheriff's investigation.

"I have not heard the first hint of anything criminal," Stilwell said. "I'm concerned about the practicality of the thing, whether we are doing

the right thing.

"I have asked Mr. French to cooperate with everyone and he said he will. He said he has nothing to conceal. I want to find out what the facts are. I want to look at this dispassionately. There are people's reputations on the line. We live in a glass house."

Two weeks ago, the News-Press revealed that French failed to tell commissioners or Stilwell about Garner's role on behalf of the county in ongoing negotiations to buy North Fort Myers Utility.

French told commissioners merely that a company named Catalina Group was doing the negotiating for the county.

Garner was representing North Fort Myers Utility at the time he began coaxing the county to buy the company.

Surprised by those revelations, commissioners killed the purchase deal, claiming French's actions had cast a dark cloud over the county's efforts to buy the utility.

On Sunday, The News-Press reported French — after urging from Garner — forced elderly, low-income residents of Windmill Village Mobile Home Park in North Fort Myers to hook into North Fort Myers Utility's sewer lines in 1997.

As a result, the park's owners passed along the \$222,850 in sewer connection fees to residents, calling French's actions a government mandate.

Stilwell said he also wasn't aware of French's actions in that case and called them inappropriate.

But Judah said Stilwell should have known.

"I was not aware of this incident, that such correspondence took place. It was inappropriate for him to do that," Judah said. "But that goes to our county manager. French is accountable to the manager. The manager should have found out and told us. It's hard to believe Stilwell didn't know about it since French works under him."

McDougall said his agents will be looking at both the North Fort Myers Utility negotiations and French actions in the Windmill Village matter.

Agents also will be looking into the 1998 purchase of Gulf Utilities by a nonprofit corporation put together by Garner and Severn Trent.

Described as a public-private partnership, commissioners gave the blessings to Garner and Severn Trent to buy Gulf Utilities and appoint a three-man board of directors to run it. Eventually, the county will assume control of the utility and its \$114 million in bond debt.

Severn Trent collected a \$400,000 fee for putting the deal together and was given a five-year contract to run the utility in addition to the contract it already had with the county.

An employee of another of Garner's clients, Tony Reeves, was paid \$168,000 from the proceeds as a consultant on the purchase. He also was put in charge of running the new utility.

Reeves also works for North Fort Myers Utility, another Garner client. Garner then appointed French to the three-man board that runs Gulf Utilities.

Stilwell said he was not told much about the Gulf Utility purchase.

Commission Chairman John Albion on Friday asked Stilwell to order French off of that board, and another board Garner appointed him to, the Florida Water Council, a nonprofit group that monitors legislation on water issues.

But Stilwell refused, saying such a move might make French look guilty of something.

— Lee Melsek can be reached 335-0386

4/12/00

Embattled director gets Lee backing

4/12/00

North Fort Myers complaints center on utility debacle

By **MIKE HOYEM**
The News-Press

A crowd of North Fort Myers residents angry about what has happened to their sewer system urged county commissioners Tuesday to fire Public Works Director J.W. French.

But commissioners refused, saying French — who is at the center of two investigations involving utilities — is innocent until proven guilty and shouldn't be disciplined prematurely.

"We have to make sure we have the facts right before we start jumping to conclusions," Chairman John Albion told the crowd. "We're going to get to the bottom of this as best as we can."



FRENCH

French has been at the center of controversy since an investigation by The News-Press revealed his ties to attorney James Garner and questionable actions involving two North Fort Myers utilities.

The investigation showed Garner represented the county and North Fort Myers Utility during the early stages of negotiations for the county to buy the utility for \$59 million.

French, the investigation found, knew of Garner's connections to both sides but didn't disclose the information to commissioners or his boss, County Manager Don Stilwell.

The News-Press also found French may have improperly pressured Windmill Village, a North Fort Myers mobile home park, into tying in to North Fort

Lee County Sheriff John McDougall said Monday he is looking into French's actions. At the request of Stilwell, auditors from the Lee County Clerk of Court's office also are investigating.

French has denied any wrongdoing and says he's confident he'll be cleared by the official investigations.

Most of the residents who spoke out Tuesday live in another North Fort Myers mobile home park, Buccaneer Mobile Estates. They're upset that owners of their park tied their sewer system into North Fort Myers Utility and are passing the cost on to residents.

Residents pleaded with commissioners to do something. "Can't the government do something to help us senior citizens?" asked Theresa Wajda, 80.

Joe Devine claimed French is guilty of collusion and told commissioners Stilwell should be "released on stupidity" because of his refusal to fire or suspend French.

John Keller of south Fort Myers also called for French's dismissal and said if Stilwell won't fire him he'd circulate petitions "asking for commissioners to fire Stilwell."

"Mr. French is the one everyone is angry with," Michael Conda told commissioners. "Put Mr. French on administrative leave until the investigation is over."

French said nothing during the hearing, but earlier in the day reiterated a complaint that he was unfairly targeted by The News-Press.

Albion said jumping to conclusions could lead to a lawsuit.

"I can't tell you how many lawsuits I've seen of people suing government because of inappropriate dismissal," he said.

— Mike Hoyem can be reached

\$60 MIL FOR \$20 MIL

The Lee County Board of County Commissioners voted last Tuesday to stop investigating the purchase of North Fort Myers Utility, Inc. (NFMU). Commissioner Coy made the motion of an outcry from the public and press about allegations of possible improprieties. The Examiner broke the story in our last issue writing about connections between Assistant County manager J.W. French and A.A. (Tony) Reeves of NFMU. The News Press wrote about connection between a local attorney and the consulting firm hired to investigate the possibility of the purchase.

Commissioner Coy and his cohorts were willing to \$59.5 million for NFMU according the "blue sheet" from an earlier commission meeting. This, just one year after purchasing Florida Cities Water Company Inc. from Avatar, a local developer in Cape Coral for \$134 million, and then lowering the rates.

The Examiner requested copies of the Year End Report of N. Ft. Myers Utility, Inc. from the Florida Public Service Commission. Every state regulated utility is required to file a financial statement with the PSC every year. NFMU has requested an extension for 1999, so 1998's report was the latest on file.

According to N. Ft. Myers Utility Annual report to the PSC, the utility has total assets of \$20,217,970, three times less what Commissioners were willing to pay for it. NFMU valued the plant at \$12,401,719 with other property totaling \$1,205,790.

As of December 31, 1998, NFMU had \$77,434 in cash, \$365 in special deposits and \$440,312 in "Special Deposits" with an Accounts Receivable of \$945,705. *cont. pg 7*

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NFMU ANNUAL REPORT

N. Ft. Myers Utility Annual PSC Report

Total Utility Plant	\$12,401,719.00
Total Other Property	\$1,205,790.00
Current Assets	\$4,665,053.00
Cash	\$77,434.00
Special Deposits	\$365.00
Other Special Deposits	\$440,312.00
Working Funds	\$0.00
Acc. Receivable	\$945,705.00
Acct. Rec. from Associated Companies	\$3,086,888.00
Materials	\$16,289.00
Prepayments	\$98,060.00
Total Assets	\$4,665,053.00
Total Deferred DEbt	\$1,945,408.00
TOTAL ASSETS	\$20,217,970.00
Equity Capital	
Other paid-in Capital	\$5,015,478.00
Retained earnings	(\$10,592,112.00)
Total Equity	(\$5,575,634.00)
Long Term Debt	
Bonds	\$13,445,000.00
Other	\$676,382.00
TOTAL	\$14,121,382.00
Total Current & Accrued Liabilities	\$3,153,390.00
Total Defereed Credits	\$385,275.00
Operating Reserves	\$0.00
Contributions In Aid of Construction	\$6,594,923.00
Acc. Deferred Incomes Taxes	\$1,538,634.00
TOTAL EQUITY CAPITAL & LIABILITIES	\$20,217,970.00

N. Ft. Myers Utility, Inc. had a deficit of \$10,592,112 in Retained Earnings, an outstanding bond of \$13,445,000 with another \$676,382 in "Other Long Term Debt."

One curious item on the report was Operating Reserves, NFMU has no money in the account.

According to one commercial real estate broker the Examiner contacted, NFMU, according to this report, is in dire financial straits (With a deficit in retained earnings shows a poor past record of management.)

NFMU has held the franchise rights for providing wastewater treatment to most of N. Ft. Myers, excluding the area which Florida Cities Water Company services, for over ten years. Over 70% of its customers are manufactured home parks. Most residential neighborhoods in N. Ft. Myers has never been offered service by NFMU.

Almost ten years ago, NFMU and Lee County government attempted to force sewers upon the residents of N. Ft. Myers. A group of citizens banded together to fight the raising costs of the sewer system. At that time, several doubtful practices came to light. The consultant hired to do the study had a conflict of interest.

At the time, the county was going to build the infrastructure to provide sewers to the homes between the two 41's, at a cost of \$60 million. The cost would be passed on to home and business owners by way of an assessment. The people were not against sewers, just the exorbitant cost.

In the ten years since, NFMU still has not offered sewers to the area.

Many of the manufactured home parks in N. Ft. Myers have been operating their own package sewer plants. In the early and mid 90's, Florida State inspectors from the Department of Environmental Protection, swarmed the area condemning many of the package plants, leaving the parks no choice but to connect to NFMU.

In the past few years, NFMU and Manufactured Home Communities, Inc. have been involved with various legal actions concerning the condemning of package sewer plants in the parks or who will foot the cost of hooking up the homes and paying capacity fees.

NFMU went out of their franchise area to connect Buccaneer Estates, the PSC fines NFMU \$5,000, which it has yet to collect. Residents of Buccaneer are appealing the decision.

Two years ago, residents of Windmill Village hired an attorney to fight NFMU and MHC over their sewer hook up. J.W. French, Director of Public Works for Lee County, received a letter from attorney James Garner (of recent Catalina Group fame) asking French to write a letter to document the county's ability to condemn Windmill Village's sewer plant, after MHC had already signed a contract with NFMU for sewer. The Examiner printed the Garner letter story in November 1998.

Opinion

Lobbyist's gains are costly to public

James Garner has managed to make himself feared by a significant number of officials



ANDREW REDING

Guest opinion

Allegations that lobbyist James Garner acted as attorney for both the county and a private sewer utility company as the county purchased the utility, and that he used his influence to get the county to force elderly, low-income citizens to hook into the sewer system prior to the purchase, thereby increasing the value of the utility and the purchase cost to the public, merely scratch the surface of the influence-peddling that has caused county bureaucrats and politicians to favor special interests over the public interest.

A year ago, in my first commentary opposing the proposed sales tax increase, I described a pathetic scene I witnessed on my first visit to the Board of County Commissioners. The year was 1996. I was then a

member of the organizing committee of Conservation 2020, an ad hoc coalition dedicated to preserving green space in Lee County. On that day, the commission chamber was filled with scores of citizens from all over the county who came to speak about the need for land preservation in the context of rapid growth. In keeping with the rules, each citizen was allowed a maximum of three minutes of public comment. The testimony was moving — from longtime residents describing a way of life that is being lost to uncontrolled development, to teen-agers asking the commissioners to be mindful of the legacy we will bequeath to future generations. In my own testimony, I pointed out that the advertising slogan we use to draw tourists to Lee County — “Florida’s Florida” — was rapidly losing its meaning.

All of a sudden, a man burst into the chamber and strode to the podium. Unlike any of the preceding speakers, he was neither deferential, nor calm, nor polite. In an angry, commanding tone, he thundered about how the county couldn’t even manage the few public lands it

already held, and should not be acquiring any more.

But what was really strange was the reaction of the county commissioners.

Where all the preceding speakers had been limited to three minutes, this one was allowed to speak for as long as he wished. Neither the chair nor any other commissioner chose to invoke the time limit as the diatribe went on for what seemed like a quarter of an hour. The rules were in effect suspended. It felt as though he owned the place, and were lecturing employees.

I asked someone with greater knowledge of county politics who that person was. “Oh, that’s Jim Garner,” I was told, “he’s a lobbyist for development interests and plays a major role in raising funds for the campaigns of county commissioners.”

Fortunately, Lee County voters had the last say on that issue, just as they did more recently on the sales tax. In November 1996, they approved the Conservation 2020-sponsored referendum which established a countywide program to purchase environmentally-sensitive lands for conservation.

In that same election, I became a Sanibel city councilman. Later, while representing Sanibel on the

Caloosahatchee Advisory Committee, I had a second, equally revealing, encounter with Jim Garner. When we got to the committee session that was to have explored the environmental impacts of upstream development on the Caloosahatchee estuary, Garner filibustered. He and another attorney (who I was later told was an associate of his at Garner, Pavese) threw up objection after objection to hold up the proceedings, as though we were in a courtroom. As had happened with the County Commission, no one intervened.

Finally, after more than an hour, I lost my patience. I asked how it could be that important government proceedings could be derailed by a couple of attorneys representing spe-

cial interests, while the public interest was left in the lurch. There was a stunned silence. Then a very angry Garner demanded that I explain what I meant by special interests. I did not respond. I knew I didn’t have to — everyone knew what I meant. At the break, a former board member of the South Florida Water Management District cautioned me that I had made a big mistake by publicly challenging Garner’s influence. Other participants discreetly thanked me for doing so, saying that to their knowledge it was the first time anyone had done so. But Garner succeeded in his objective that day, as he has just about every other time. And Garner’s gain has been the public’s loss.

I’m not suggesting there’s any-

thing wrong with an attorney seeking to promote his clients’ interests. But there’s something very wrong with a board of county commissioners that fails to defend the public interest, or even enforce its own rules of procedure. And there’s something wrong about a campaign finance system that allows special interests to wield undue influence on commissioners. Which is why commissioners continue to be so reluctant to antagonize development interests by raising impact fees to pay for new infrastructure, and why they keep on trying to shift that burden to the public through higher taxes.

— Andrew Reding is a member of the Sanibel City Council.

Scope of investigation of county, utilities grows

By **LEE MELSEK**
The News-Press

An investigation into Lee County's dealings with sewer utilities has widened as investigators hunt for commission phone logs stretching back to 1990.

Part of what investigators now are looking at shows the county has had a history of questionable dealings with at least one sewer company — North Fort Myers Utility.

Questions of conflict of interest surfaced in the coun-

ty's dealings with the company in the early 1990s and similar questions were raised again this month in an investigation by The News-Press. The company is one of several utilities whose dealings with the county are being investigated.

The questions that surfaced in the county's dealings with North Fort Myers Utility a decade ago resulted in the loss of nearly \$1 million in tax money in an aborted attempt to force residents and businesses to hook into the company's



GARNER

Garner, a powerful lobbyist and lawyer, and his ties to the county and North Fort Myers Utility.

sewer system.

This year the county was negotiating to buy the sewer company when conflict of interest questions arose over the role of James

See SEWER / 8A

SEWER: Request for records broadens

From Page 1A

The scope of the investigation has grown to such an extent that a team of four Lee County sheriff's investigators that began the probe three weeks ago has been increased to six members. With help from the FBI, they have asked each of the county's five commissioners for telephone logs and other documents from October 1990 to the present.

Commissioner Ray Judah said he would get those records to investigators.

Judah said the request for so many records didn't surprise him. "I don't question any investigation to determine the integrity of a government body."

Commission Chairman John Albion was surprised by the request. He joined the board in 1992 and investigators asked for all of his phone logs and appointment schedules from that year onward.



ALBION

"I had thought they were only going back to the purchase of Gulf Utility," which occurred in 1998, Albion said. "They are just covering all the bases, I guess. They're throwing out a big net."

Investigators also plan to talk to former Commissioner Vicki Lukas, now serving a 27-month federal prison sentence for mail fraud, a crime she committed while on the commission between 1990 and 1993.

Lukas led a citizens' committee that looked into the county's attempts to force about 6,000 residents and businesses to hook into North Fort Myers Utility in the early 1990s. The committee eventually recommended against it, saying it was too expensive for the residents who lived in the target area.

Investigators won't say why they want to talk to her, but they may want to know what else she learned during her committee's look at the county's dealings then with the utility.

The hunt for records includes documentation of the county's ill-fated attempt in the early 1990s to put sewers in an area of North Fort Myers between U.S. 41 and Business 41.

Commissioners backed out of the plan after public opposition arose and conflict of interest questions were raised.

The plan called for hooking 6,000 homes and businesses into North Fort Myers Utility, whose proposed \$59.5 million sale to the county this year is one of the focuses of the investigation.

The county had an agreement that the company would pay for feasibility studies. But George Reilly, who then headed the county's utilities department, paid for the studies by contracting with the utility company's consultant.

The firm Reilly contracted with for \$146,000 — Post, Buckley, Schuh and Jernigan — not only worked for the utility but was his former

employer.

In 1996, county auditors questioned why the county didn't recover 50 percent of the \$146,000 from the utility because Reilly committed county money to the studies despite the agreement calling for the utility company to do that.

Assistant County Attorney David Owen said, he and his office were afraid the utility might sue if the county tried to recover half the \$146,000 expense because the studies were completed.

In the face of mounting public outcry over the conflict and the amount of money it would cost residents to hook into the sewer system, commissioners backed out of the deal in 1992 and Reilly was forced to resign.

Auditors found the county spent nearly \$900,000 in studies and design work by the time the project was killed.

Questionable deals reviewed

Federal authorities and Sheriff John McDougall refuse to discuss their investigation. But records provide a peek at what they are examining.

On Monday, sheriff's agents sent letters to each commissioner requesting a wide-ranging list of documents from their offices. They want phone logs, office appointment calendars and records showing who each commissioner has met with over the last decade.

They also want all commission correspondence regarding the proposed purchase of the utility and the purchases of Gulf Utility and Florida Cities Water Company.

The county encouraged a private group led by Garner and his client, Severn Trent, to buy Gulf Utility in south Lee County in 1998. Severn Trent is a private company that runs utilities for the county.

Commissioners plan to eventually assume control of the company from the nonprofit board that currently runs it. They will also assume its \$114 million bond debt.

The county bought Florida Cities Water company last year and was negotiating to buy North Fort Myers Utility company until revelations about Garner's ties to the deal caused commissioners to end negotiations this month.

Investigators also want all correspondence between each commissioner and the Tallahassee law firm of Rose, Sundstrom and Bentley, and one of the firm's members, Martin Friedman. The firm represents North Fort Myers Utility and also put together the deal, with the commission's blessing, in which Gulf Utility was purchased.

The investigation began after The News-Press earlier this month raised questions about Garner's roles in county utility deals and his association with Lee County Public Works Director J.W. French.

French knew Garner was concealing his role as a negotiator for the county in the attempted purchase of North Fort Myers Utility but didn't tell county officials.

French told the commission a Coral Gables company, Catalina Group, was negotiating the deal for

the county even though he knew Catalina's officers were Garner's employees.

Records show Garner represented North Fort Myers Utility at the time he persuaded French to get commissioners involved, in trying to buy the company, a conflict that could violate Florida Bar ethics rules.

French sits on the boards of two nonprofit companies created by Garner. One is a think tank that studies legislation on water issues. The other is the board of Gulf Environmental Services, the company that bought Gulf Utilities.

Investigators are looking at the relationship between French and Garner for that and other reasons.

In 1997 French did Garner a favor by sending a letter to Windmill Village Mobile Home Park in North Fort Myers threatening to force the park to hook up to North Fort Myers Utility sewer lines.

Garner represented North Fort Myers Utility at the request of Tallahassee attorney Bill Sundstrom, one of the lawyers whose correspondence with the county investigators want to see.

Sundstrom didn't return calls for comment.

French later sent a second letter forcing the park to hook into the utility company's sewer system, a move park owners called a government mandate that allowed them to charge the park's 491 homeowners \$462 each in hookup fees.

Park owners later agreed to reimburse the homeowners for the hookup fees.

French has since told county auditors his favor for Garner was a mistake.

— Lee Melsek can be reached at 335-0386.



FRENCH

Lee County EXAMINER

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North Fort Myer's Community Newspaper

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APRIL 26, 2000

NFM SEWER ISSUE STILL STEWING

Is the sewer issue in N. Ft. Myers over or only just beginning? According to County Commissioner John Manning it is not over. According to Commissioner Coy, it is.

Manning said, "J.W. French has more integrity in his little finger than Lee Melsek or anyone at the News Press. When it is all done, J.W. will be exonerated. Lee County will own all the sewers in Lee County."

In a meeting with Commissioner Coy he stated, "We will only proceed with the purchase of N. Ft. Myers Utility (NFMU) if either the Florida Public Service Commission (PSC) commands us to or if the N. Ft. Myers public wants it."

Two commissioners, two differing opinions.

According to the minutes of the of the Board of County Commissioners meeting concerning the purchase of NFMU: "Commissioner Coy stated his concerns regarding the County purchase of North Fort Myers Utility, at this time; indicated that it would be best for Staff to "cease and desist"; and perhaps to re-look at the purchase at some future time, seconded by Commissioner Judah. Further discussion was held between the Commissioners and County Manager Donald D. Stilwell concerning: BOCC Public Policy; obtaining due-diligence information, including engineering reports; the competitive negotiation process; and the cost of purchasing NFMU. Commissioner Coy restated his motion. Commissioner Manning questioned "when will they know when it occurs" (to re-look at the purchase). Commissioner Coy stated he would bring it up at a public hearing. The motion was called and carried."

Commissioner Coy, or any commissioner, can re-open the purchase at any time, allowing the County to purchase NFMU.

A county document entitled "Lee County Regional Utility System" explains the process of purchasing a private utility and the steps Lee County takes. Page two of the document details the recent purchase of Florida Cities Water Company Inc. (FCWC) and its addition to Lee County Utilities.

The document goes on to "Potential Utility Purchases", number three on the list is N. Ft. Myers Utility. It explains that the Board of County Commissioners approved a non-binding agreement on September 7, 1999 with the Catalina Group to negotiate the purchase. On April 4, 2000 the Board decided to stop all work on the purchase.

The document reviews the sewer problems in N. Ft. Myers.

1) Waterway Estates vs. Florida Cities

Residents of Waterway Estates objected to rates Florida Cities which are regulated by the PSC. The PSC ordered FCWC to repay a portion of the rates. According to the County prepared document, "this repayment is a liability of FCWC, and was specifically excluded from the purchase by Lee County. The rebate from FCWC required by the PSC is the PSC responsibility."

2) Windmill Village Mobile Home Park (a Manufactured Home Community (MHC) property)

Windmill Village was connected to NFMU prior to the purchase proposal. The county (J.W. French at the bidding of Attorney Garner, owner of the Catalina Group) issued two letters regarding connection of this system. A legal dispute occurred which has been resolved so that residents do not have to pay connection fees.

3) Buccaneer Mobile Home Park (a MHC property)

NFMU connected Buccaneer to the sewer system. There are both private legal disputes and legal disputes regarding NFMU and the PSC. The county is not involved in any of the disputes.

In an interview with Commissioner Coy, which County Attorney David Owen attended and answered most of the questions, several issues were raised by the Examiner. The first being the County's intention to shut down the Waterway Estates Wastewater Treatment Plant which the County just purchased last year from Avatar.

Owen denied the County planned a quick shut down of the plant, but a slow gradual one as the plant has outlived its useful life-span.

The Examiner questioned Coy (Owen) about the interconnect with Olga. At the March 28 BOCC meeting, Commissioners ap-

proved \$332,442 for a waterline interconnect which will consist of 6,994 feet of waterline, six jack and bores and the waterline crossing Hancock Creek/Pondella Bridge connecting Waterway Estates to the Olga/Corkscrew Systems to relieve high demands on the Waterway Estates Water Treatment Plant.

Owen answered this was for drinking water only.

The Examiner questioned Coy (Owen) concerning the statement in another County document which says, "the County's purchase of the NFMU system will allow it to eventually take the Waterway Estates Plant off-line entirely."

Owen stated only the excess from the Waterway Estates plant would be piped to NFMU, but the county is looking to eventually shut Waterway Estates down.

Tony Reeves, Vice President of North Fort Myers Utility and manger for the County owned Gulf Environmental Services in south Lee County, was paid \$168,421.50 from

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SEWER CONT

the County's purchase of Gulf Utility, which became Gulf Environmental Services

The first board meeting of Gulf Environmental Services, it's board, consisting of J.W. French, Kirk Beck and Fred Edenfield, also had in attendance, Jim Garner, of Catalina Group fame, Paul Adams of ST Environmental Services, Tony Reeves, consultant, and Bill Sundstrom, who has represented N. Ft. Myers Utility in legal matters for over 5 years.

From those in attendance at that meeting of one of the first sewer plants the County acquired:

- Tony Reeves was appointed manager of GES.
- ST Environmental Services received a maintenance contract from the county for its utilities.
- Jim Garner later was a paid consultant for the NFMU purchase.
- Bill Sundstrom is still representing NFMU as its legal counsel.
- J.W. French is Public Works Director for Lee County and President of GES.

By remarkable coincidence, all of the players mentioned above are involved in the purchase of North Fort Myers utility.

Sewer company accused of 'blackmail' scheme

Threat to cut off service draws Coy's ire

By LEE MELSEK
The News-Press

NORTH FORT MYERS — A sewer operator is threatening to cut off service to hundreds of residents of a mobile home park for not paying their bills, a move Lee County Commissioner Andy Coy calls a "blackmail" scheme.

Coy aimed his anger Wednesday at North Fort

Myers Utility, which serves about 10,000 homes and businesses in North Fort Myers.

Commissioners last month backed out of negotiations to buy the company after an investigation by The News-Press raised questions about possible conflicts of interest in the negotiations.

The utility has since said it will shut off sewer service this

week to hundreds of people in Buccaneer Village mobile home park who haven't paid their sewer bills the past two months. The residents are protesting the takeover of their park's sewer service.



COY

Park owner, Manufactured

Homes Communities (MHC), shut down its own sewer plant and turned the service over to the utility last year.

Park residents claim the deal was illegal and appealed the Florida Public Service Commission's decision allowing the takeover to the First District Court of Appeal in Tallahassee. A decision there is pending.

North Fort Myers Utility began billing Buccaneer residents for monthly service in

April.

Between 500 and 600 of the park's 971 homeowners each owe about \$50 or \$60 for two months sewer service and are refusing to pay until the appeal court renders a decision.

Leaders of the park's homeowners association say they want the utility to wait until after the appeal court rules before turning off service.

An attempt by MHC to stop the utility from capping sewer lines in the park failed

Wednesday when Circuit Judge William McIver refused to issue a restraining order.

North Fort Myers Utility Vice-President Tony Reeves said he'll order bulldozers into the park to begin digging up lawns and disconnecting sewer lines but he refused to say when that will begin.

When that happens, Buccaneer Homeowner's Association President Joe

See SEWER / 8A

SEWER: Commissioner blasts utility

From Page 1A

Devine said he'll rent a Porta-John for a toilet and empty his sink and bath water onto his lawn.

Devine also said other residents whose sewers are disconnected will be able to use showers and toilets at the park's recreation building.

"Sixty-five percent of the people living here are homebound, elderly and disabled," Devine said. "We want this thing stopped until after the appeal court has had a chance to rule on our case."

Coy, whose district includes Buccaneer Estates, declined to get directly involved in the dispute on the advice of county attorney's, who claims it's a private matter.

But Coy blasted the utility after it raised anew the matter of the county buying the company.

"The utility is trying to blackmail the county into buying their facility by putting the citizens of Buccaneer Village at risk," Coy said. "I really hope they don't do this. It is a horrible thing to do to these people."

Officials at North Fort Myers Utility told MHC last week it would back off its threat to cap sewer lines in the park only if the county was willing to ask it to do so and if MHC was willing to discuss a bulk sewer rate rather than charging individual homes.

The company said the bulk rate could be put in effect "in anticipa-

"The utility is trying to blackmail the county into buying their facility by putting the citizens of Buccaneer Village at risk."

— Andy Coy,
Lee County Commissioner

tion of of a future county acquisition of the North Fort Myers Utility."

That statement angered Coy. "That company already has a horrible public-image problem and what they are going to do is just horrible. I would ask the residents to go ahead and pay the bills, ask the Public Service Commission to put that money in escrow and, if the residents win their case in the appeal court the money could be returned to them," Coy said.

Tallahassee attorney Martin Friedman, who represents the utility, refused to respond to Coy's comments Wednesday.

Coy and the rest of the commission were negotiating to buy the utility in March. They were told the

price was nearly \$60 million.

The News-Press revealed the company hired to represent the county in negotiations, Catalina Group, was headed by employees of a powerful Lee County lobbyist, James Garner, an attorney who raises large amounts of money for commissioners in their re-election campaigns.

Garner has represented North Fort Myers Utility in the past and it was still one of his clients when he began negotiating the purchase on behalf of the county in September.

That association currently is being reviewed by the Florida Bar, which has asked Garner to respond to The News-Press articles on his activities.

The News-Press also revealed in April that Lee County Public Works Director J.W. French, at Garner's urging, helped the utility increase its value by ordering nearly 500 homeowners in another North Fort Myers mobile home Park, Windmill Village, to hook into the utility.

That action, along with the proposed North Fort Myers Utility purchase also are focuses of a Lee County Sheriff's Office investigation.

Lee County auditors also are looking into French's actions on behalf of Garner.

— Lee Melsek can be reached at 335-0386.