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IN REPLY REFER TO:

July 1, 2004

Ansley Watson, Jr.
P.O. Box 1531
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VIA E-FILING

Blanca S. Bayo, Director
Division of Commission Clerk & Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

**Re: Docket No. 040278-GU – Petition of Florida Public Utilities Company to
resolve territorial dispute with Peoples Gas System**

Dear Ms. Bayo:

Enclosed herewith for filing in the above docket on behalf of Peoples Gas System, please find Peoples' Motion to Revise Procedural Schedule for Proceedings on Petition of Florida Public Utilities Company to Resolve Territorial Dispute.

Thank you for your usual assistance.

Sincerely,



ANSLEY WATSON, JR.

AWjr/a
Enclosure

cc: Ms. Angela Llewellyn
Joseph A. McGlothlin, Esquire
Adrienne Vining, Esquire

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Public Utilities)
Company to resolve territorial dispute)
with Peoples Gas System)
_____)

Docket No. 040278-GU

Submitted for Filing:
7-1-04

**PEOPLES GAS SYSTEM'S MOTION TO REVISE
PROCEDURAL SCHEDULE FOR PROCEEDINGS ON PETITION OF
FLORIDA PUBLIC UTILITIES COMPANY TO RESOLVE TERRITORIAL DISPUTE**

Peoples Gas System ("PGS"), by its undersigned attorneys, pursuant to Rule 25-106.204, *Florida Administrative Code*, and on the grounds hereinafter set forth, moves the Commission to revise the procedural schedule for proceedings on the Petition of Florida Public Utilities Company ("FPUC") to resolve a territorial dispute with PGS, and in support thereof states:

Background

1. FPUC's petition requests that the Commission resolve a territorial dispute between FPUC and PGS to determine which of the two utilities should be permitted to provide natural gas service to the "disputed area" identified in the petition. The alleged disputed area includes the Scripps Project (as more fully described in the petition), which the petition alleges is to be located at a presently undeveloped site in Palm Beach County. The Scripps Project, a proposed major biomedical research facility, will allegedly anchor the development of a large, mixed use, commercial and residential project on a portion of approximately 1,900 acres known as Mecca Farms. It is further alleged that the Scripps Project has been determined by Palm Beach County to be the "critical mass" that will attract similar and related activities" to support the development of the Vavrus Ranch property (approximately 5,100 acres) adjacent to the property on

which the Scripps Project will allegedly be built. The Mecca Farms property, on which the Scripps Project will allegedly be located, and the adjoining Vavrus Ranch property constitute the majority of the “disputed area” as to which the petition alleges there is a territorial dispute between FPUC and PGS.

2. The current procedural schedule¹ in this docket calls for initially handling the FPUC petition under the proposed agency action procedure. It calls for the filing of a staff recommendation on July 22, 2004, for consideration by the Commission at its August 3, 2004 agenda conference. A proposed agency action order is scheduled to be issued by August 23, 2004, with a consummating order on September 16, 2004 if no protest to the PAA order is timely filed. The Commission Staff issued its first data request to each of the parties by letters dated May 25, 2004, seeking information contemplated by Rule 25-7.0472, *Florida Administrative Code*. The requested information is to be provided on or before July 2, 2004. All of the information requested is with respect to the “disputed area” identified in FPUC’s petition.

The Existence of a Territorial Dispute Is Currently a Mere Assumption

3. PGS concedes that, as of the date FPUC’s petition was filed, the plans for the location of the Scripps Project were as alleged in the petition. However, recent media reports indicate that a final decision on the project’s location has yet to be made. (See *Palm Beach Post* articles attached to this motion as Composite Exhibit 1.) According to these articles, not only is the cost to Palm Beach County of locating the Scripps Project at Mecca Farms being questioned by public officials and others, but its environmental impact on the entire area and its lack of proximity to major highways and other infrastructure are being questioned as well.

¹ Case Assignment and Scheduling Record, or “CASR.”

4. According to news reports (see June 29, 2004 *Palm Beach Post* articles attached to this motion as Composite Exhibit 2), the Palm Beach County Commission agreed on June 28, 2004 to “study alternative sites” for the Scripps Project “in case costs or possible lawsuits prevent the transformation of the Mecca Farms orange grove into a biotechnology research village.” The County Commission has directed its staff to provide a list of alternate sites, and a consultant for further study, by the commission’s July 13 meeting. Another article included in Composite Exhibit 2 indicates that although the Economic Development Research Institute (which apparently intends to build a science park on the Vavrus Ranch portion of the allegedly disputed area) selected a master developer on June 28, 2004, the Palm Beach County Commission declined to consider exemptions to the County’s comprehensive plan that are needed to move the project forward “because of uncertainties surrounding it.”

5. FPUC’s petition makes various allegations regarding the proximity of the existing distribution systems of FPUC and PGS to the assumed location of the Scripps Project (and the Vavrus Ranch development which might accompany it), and regarding the cost to each to extend facilities to serve the Scripps Project and the remainder of the alleged disputed area. Whether or not those allegations are correct cannot be determined by the Commission until a final decision is made by Scripps, and/or by Palm Beach County, regarding just where the Scripps Project will be located within the State of Florida. In essence, even if FPUC and PGS provide responses to the currently pending data requests issued by the Commission Staff, any recommendation by Staff based on the allegations of the petition and the responses of FPUC and PGS to the data requests would necessarily be based on an *assumption* regarding the ultimate

location of the Scripps Project – the area allegedly in dispute between FPUC and PGS. The same would be true of any proposed agency action order the Commission might issue based on the Staff’s recommendation. In fact, if a change is made in the location of the Scripps Project, *there may be no territorial dispute* between FPUC and PGS to be resolved by the Commission. Until the location of the Scripps Project has been decided, there is no real territorial dispute between FPUC and PGS to be resolved.

6. While this Commission has jurisdiction pursuant to §366.04(3)(b), *Florida Statutes*, to resolve territorial disputes between gas utilities such as FPUC and PGS, the Commission has limited its exercise of such jurisdiction to “actual and real” controversies on the ground that no basis for its interceding in a potential dispute exists. (See Order No. 15348, Docket No. 850132-EU, November 12, 1985.) PGS submits that until the location of the Scripps Project has been determined, there is no actual or real territorial dispute between FPUC and PGS to be resolved by the Commission.

7. FPUC’s petition makes no allegation that either it or PGS has been requested by any potential customer to provide natural gas service at any point within the alleged disputed area. Nor does the petition contain any allegation that either utility is presently providing service within an area allocated to the other in a Commission-approved territorial agreement.

8. Under the circumstances, PGS submits that the territorial dispute alleged in FPUC’s petition is, at present and at best, a mere hypothetical dispute, and that this Commission has, in such cases, declined to exercise its jurisdiction. FPUC’s petition to resolve a dispute which does not yet factually exist is premature. Regardless of the facts developed through discovery in this proceeding, or even an evidentiary hearing, all

facts would at the present time be based on a mere assumption regarding the location of the Scripps Project.

Neither Party to the Alleged Dispute Will Be Prejudiced if the CASR Is Revised

9. As indicated in paragraph 7 above, none of PGS, FPUC or any member of the public will be adversely affected by the revision of the procedural schedule sought by this motion.

Specific Relief Requested

10. PGS requests that the Commission revise the current procedural schedule in this docket to provide for the filing of a staff recommendation approximately six months subsequent to the currently scheduled date of July 22, 2004 (with corresponding changes to the dates for the agenda conference, PAA order, etc.). During this period of abeyance, the Commission Staff could monitor developments regarding the planned location of the Scripps Project, and further revise the procedural schedule when such location is finally decided.

11. PGS also requests that the date for the parties' responses to the Staff's first data request be similarly extended to a date approximately six months subsequent to July 2, 2004. Such extended date could later be modified by the Commission Staff at such time as the location of the Scripps Project is finally determined.

12. Undersigned counsel has conferred with counsel for FPUC and the Commission Staff. Counsel for the Commission Staff has no objection to the granting of the relief sought by this motion. Counsel for FPUC objects to the relief sought by this motion. Staff Counsel has agreed that neither party must respond to Staff's first data

requests at this time, and that the parties will be notified of a new deadline for responses at a later date.

Respectfully submitted,



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Attorneys for Peoples Gas System

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion has been furnished this 1st day of June, 2004, by e-mail and regular U.S. Mail, to Joseph A. McGlothlin, Esquire, McWhirter Reeves Law Firm, 117 S. Gadsden Street, Tallahassee, Florida 32301, and Adrienne Vining, Esquire, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.



Ansley Watson, Jr.

Talk surfaces of moving Scripps site
The increasing cost tied to Mecca is raising concerns.

By Stacey Singer
Palm Beach Post Staff Writer
Wednesday, June 23, 2004

The billion-dollar price tag now sticking to The Scripps Research Institute is causing politicians from West Palm Beach to Washington to ask a question that, until recently, was unthinkable: Should the county's planned biotech park be moved?

At least three county commissioners and one congressman are raising the issue, after county analysis showed that transforming the Mecca Farms orange grove into a biotech village could cost the county \$467 million above the \$200 million committed to Scripps in October. The state already has set aside \$310 million for Scripps.

"We're not Donald Trump and this is not Atlantic City," said U.S. Rep. Mark Foley, R-West Palm Beach, who this week began conversations with Scripps, county, and development officials on the viability of other sites. "We love Scripps, we want Scripps, we just don't want to ignore opportunities that are in front of our nose."

County Commission Vice Chairman Tony Masilotti said he wants to explore a 900-acre site on Indiantown Road, just west of Florida's Turnpike in Jupiter, known as Parcel 19. He's also interested in the Briger property, a 600-acre site on Donald Ross Road, across from Abacoa.

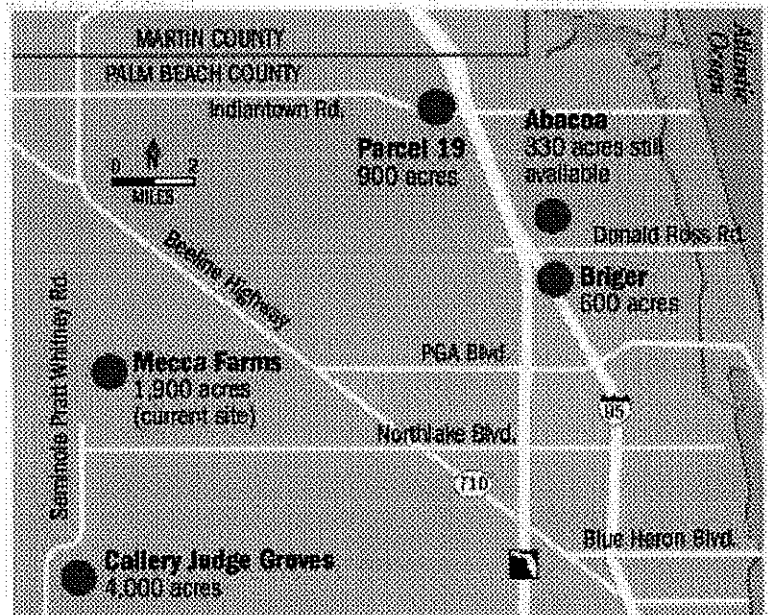
Commissioners Burt Aaronson and Karen Marcus also have asked whether moving to those or other sites could save the county money.

"Those are good sites. They're already approved for development. There may be others," Masilotti said. "I think we've got an obligation to taxpayers to look at the least expensive way to accomplish our goals."

More than eight months after the county committed to buy Mecca Farms, pulling the plug on the project would prove both costly and time-consuming, county staff cautioned.

Alternatives sites

As costs to develop Mecca Farms rise, politicians are beginning to talk about other possible homes for a biotechnology research park. Here are a few under consideration:



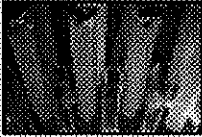
Source: SCRI research and Palm Beach County records

STAFF GRAPHIC

[\(enlarge photo\)](#)

Scripps in

**South
Florida**



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Additionally, other potential sites have traffic, environmental, size and cost issues of their own.

Bevin Beaudet, manager of the biotech park effort for Palm Beach County, estimated that \$5 million already has been spent on consultants, planners, engineers and architects to develop Mecca Farms and Scripps' buildings. The county has a contract to purchase the 1,920-acre Mecca site on Seminole Pratt Whitney Road for \$60 million.

"We've been told to move mountains for this site, and we've done it," Beaudet said.

Another complicating factor is time. The local contract with Scripps says Palm Beach County must provide 400 acres of buildable land by January 2005, at a mutually agreeable location. The permit application alone usually takes longer.

"Scripps is going to be the dominant voice in the room" on whether an alternate site is preferable, Foley said.

The matter has not been discussed with Scripps, Doug Bingham, Scripps' executive vice president and general counsel, said Wednesday.

"No one from the county has approached us to suggest that there is any issue" with the Mecca site, Bingham said.

Still, no one is closing the door to further discussion — not Scripps and not Gov. Jeb Bush.

"The governor hasn't changed his position. He thinks Scripps and the biotech park should locate wherever they need to allow for massive success," said Bush spokesman Jacob DiPietre, adding that Scripps, not the governor, selected Mecca Farms.

Fueling concern is the very real threat that an environmental or homeowners group might file a lawsuit to try to stop or simply slow down the project.

The Environmental & Land Use Law Center and 1000 Friends of Florida are threatening to fight efforts to develop the Vavrus ranch next to Mecca Farms. The county's project could become embroiled in a lawsuit, said Lisa Interlandi, regional counsel for the law center.

Developing the Mecca Farms site requires the county to change its comprehensive land use plan to allow dense development in a rural area. That could open the floodgates to uncontrolled growth, she warned.

"It makes it difficult to not give exemptions to other people when they give them to themselves," Interlandi said.

Both environmental groups enthusiastically embrace sites closer to existing development, such as Parcel 19 and the Briger property, near Abacoa.

But those properties have their own issues.

Parcel 19 is owned by WCI Communities of Bonita Springs. The 900-acre property is slated to become a golf resort community. Golf legend Greg Norman already has designed a 36-hole course, said Kyle Reinson, a WCI spokesman.

The land has been annexed by Jupiter and the proposal has passed its first reading before the town council. The next hearing is scheduled for July 20. WCI would like to put the golf course, 242 luxury homes, 488 multi-family homes, 50 time-share units and a 230-room hotel on the land.

"We've been going in a certain direction for quite some time. It isn't always easy to change plans in midstream," Reinson said.

Bingham said Scripps asked about the site in October but was told it wasn't available. The same was true for the Briger site across from Abacoa on Donald Ross Road.

Bingham said he was told the land was embroiled in probate proceedings.

"We were told it wasn't available, so we didn't do any deep analysis," Bingham said.

Ultimately, the county will earn back its investment on Mecca Farms as land is sold and developed, Beaudet said.

"Once those jobs are here, the benefits to the county go on for years and years and years," he said. "I really believe this is a good investment. I believe it in my heart."

Staff researcher Krista Pegnetter contributed to this story.

Scripps site options pitched amid Mecca questions


By Stacey Singer
Palm Beach Post Staff Writer
Thursday, June 24, 2004

- [Scripps chief warns of delays if site changed](#)
- [Grants offered to train for bio-jobs](#)

Word that Palm Beach County commissioners might reconsider the home of the planned biotechnology research park set off a flurry of activity from land owners, politicians and officials at The Scripps Research Institute on Thursday.

City officials in Boca Raton reminded the commission that the T-Rex Corporate Center on Yamato Road has 160 acres by a new Tri-Rail station, across the highway from Florida Atlantic University's main campus and near several other undeveloped commercial tracts.

Scripps in South Florida



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"They should capitalize on what's in place already," said Boca Raton City Council Member Dave Freudenberg. "The space is here, available now."

Nathaniel Roberts, owner of Callery-Judge Grove, wrote commissioners to say that he has an enormous 3,800-acre property that has no wetlands and is accessible by roads on five sides.

"If you're thinking of moving it please be aware we're here," Roberts said. "There are very few places that you could build a proper integrated, master-planned community."

Meanwhile, Commission Vice Chairman Tony Masilotti said he'll ask for consensus to study alternatives to Mecca Farms at a special meeting Monday.

"I don't profess to know all the answers, I just want to look at all the options," Masilotti said. "We're talking now about a billion dollars of taxpayers' money."

A county analysis earlier this month found that the total investment in the county's biotech park could reach \$667 million over the life of the project, depending on how quickly revenues are raised from land sales. The state's investment in Scripps is \$310 million. The figures have touched off a debate about the wisdom of risking so much taxpayer money on real estate.

The debate likely will come to a head at Monday's special commission meeting, when the county's comprehensive land use plan is slated to be amended to allow for a biotech park on the orange grove that is now Mecca Farms.

Keith McKeown, a spokesman for Scripps in La Jolla, Calif., said the institute is deciding now whether "somebody needs to get on an airplane" to attend the meeting and address the sudden interest in changing location.

County Commission Chairwoman Karen Marcus said that in a recent conversation with Scripps President Richard Lerner, he underscored the need to meet the timetable in the county's contract. It says the county must provide 400 acres of buildable land by January 2005.

"He said the most critical element is to get it done on time," Marcus said.

Alternate sites for Scripps campus will be studied

By Stacey Singer, Connie Piloto
Tuesday, June 29, 2004

WEST PALM BEACH — Palm Beach County commissioners agreed Monday to study alternative sites for The Scripps Research Institute in case costs or possible lawsuits prevent the transformation of the Mecca Farms orange grove into a biotechnology research village.

Commissioners directed their staff to provide them with a list of alternate sites — and a consultant for further study — by their July 13 meeting.

"We haven't done this type of analysis and we owe it to the taxpayers to do it because it is their money," Commission Chairwoman Karen Marcus said during a special meeting to amend the county's land-use plan for the research park. "If this truly is the best site, then it will stand up under the scrutiny."

The decision to study alternatives comes eight months after the commission and Scripps committed millions of dollars to develop Mecca Farms for the venture. Now, with public opposition mounting, the plan suddenly seems less certain. Traffic is one of the biggest misgivings raised by residents. John Hannon lives in a neighborhood on the south side of PGA Boulevard, two lanes that would be widened to six. Homeowners there are horrified, he said.

"All I see is an opportunity to lose value and lower our quality of life," Hannon said. "We've got a problem, folks, and the Mecca site is causing these problems."

In La Jolla, Calif., Doug Bingham, Scripps' executive vice president and general counsel, greeted the commission's new tack with anxiety and frustration. Scripps, which already has spent \$1.5 million on the project, now is trying to hire a master developer and finish a master plan for its 100-acre campus on Mecca Farms. Meanwhile, the institute is trying to get top scientists to commit to relocating to Palm Beach County — with assurances that Scripps Florida really is going to happen.

"As long as they understand that they're creating risk in terms of chances of success, then fine. Trouble, ambiguity and change are the three things that make business nervous, right? When you get that kind of nervousness, momentum stops," Bingham said.

He noted that the mounting uncertainty in recent weeks has produced offers from other parts of the state.

"I haven't entertained any of those discussions at this point — we're trying to stay focused on Mecca," Bingham said. "But it has been interesting."

One of the biggest uncertainties about the project is the threat of litigation posed by environmental groups. Lisa Interlandi, a lawyer with the Environmental & Land Use Law Center, warned commissioners that building on Mecca Farms would violate the state's legal restrictions against urban sprawl. That and traffic issues could provide the grounds for a legal challenge, she said.

But there are no easy alternatives. Moving the site would be contractually difficult, Assistant County Attorney Laura Beebe told the commission.

The county's contract with Scripps requires a "best-faith" effort to close on the 1,920-acre Mecca Farms property by Jan. 3, Beebe said. If the county cannot close on the land, it has another 60 days to find an alternate location with at least 500 acres. The alternate must be agreeable to both the county and Scripps.

Soaring costs might not be sufficient grounds to avoid closing on the land, Beebe said. A recent county estimate said that the biotech park would require a total investment of about \$667 million, including Scripps' buildings. Ultimately, those dollars would be earned back from land sales and property tax revenues, the study found, although it would take more than 30 years.

As many as four commissioners — a majority — have expressed worry that the investment may be too risky. "This thing went like a runaway train, and I think it's time somebody put the brakes on a little bit," Commissioner Burt Aaronson said. "The amount of money going up will tie this county up for years to come. It will mortgage us to the hilt."

Aaronson advocated bringing in a private developer to take over the project if an alternate site proves unworkable. Most important is having a backup site in case storm clouds gather, said Tony Masilotti, commission vice chairman.

"I'm suggesting we move forward, but we also have a fallback position," he said. "If the costs get out of hand, if we have environmental concerns, if we have other concerns, then we will have other sites at hand."

The study of alternative sites will focus on properties that have at least 700 buildable acres, sit on existing sewer and water lines and pose few or no environmental problems. The biotech village originally envisioned for Mecca Farms and the nearby Vavrus ranch could exceed 3,500 acres.

The promise of a vast biotech village was what sold Scripps on Palm Beach County in the first place. A smaller campus wouldn't be the same, Bingham said.

"They had a very clear vision for what was going to happen on Mecca and that's what attracted us over the other places we looked at in the state," Bingham said. "Mecca really stood out from all the other sites in the state, in terms of the county's commitment to what they were going to do there."

Bingham also was disappointed to hear that the commission passed its land-use changes without making provisions for the eastern part of the planned park that is now owned by cattle rancher Charles Vavrus, and under contract with a spin-off of the Business Development Board called the Economic Development Research Council. The Vavrus property is supposed to carry most of the housing and commercial sites, including a hotel.

"In our agreement with the county, they're supposed to be working toward a joint planning agreement with the city of Palm Beach Gardens," Bingham said.

To date, no planning agreement exists.

Still, the plans to develop Mecca Farms are moving forward. On Monday, the commission created a new type of land use called a "scientific overlay," and made amendments to the urban service area so that sewer and water lines can be extended to the site. It also gave the property special status that will allow more than the planned 2,000 homes to be built there, in case the 7,500 homes originally contemplated on the Vavrus property cannot be built.

Those amendments will be sent to the Department of Community Affairs in Tallahassee by Friday, said Barbara Alterman, the county's executive director of planning, zoning and building. DCA has agreed to review

the county's plan and send back recommendations within 30 days. The county will vote for final adoption of the land-use changes on Sept. 8.

Soon after, the legal problems could erupt. A small, 21-day window of opportunity opens for any groups contemplating challenges through the state's administrative court. A case like this could take about a year to wind its way through the process, said Richard Grosso, general counsel for the Environmental & Land Use Law Center.

Meanwhile, the project would be stopped in its tracks, he said. "There would be pretty lengthy litigation over something this huge," Grosso said.

An extended legal battle could end up before the Florida Supreme Court. During appeals, construction could go forward. But there is risk that a court ultimately could order demolition of the buildings should the county lose.

Staff writer Tony Doris contributed to this story.

Lennar-Centex approved to develop science park

By David Sedore and Stacey Singer
Palm Beach Post Staff Writers
Tuesday, June 29, 2004

WEST PALM BEACH — The nonprofit that wants to build a 1,700-acre science park on land now owned by Charles Vavrus finally has a master developer.

A partnership of Lennar Corp. and Centex Corp. agreed to a deal with the Economic Development Research Institute late Monday even though Vavrus has yet to sign off on documents needed to take the project through regulatory reviews. The park, which is to be built adjacent to The Scripps Research Center, is viewed as a critical element in the county's attempt to create a biotechnology industry.

Scripps in South Florida



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Under the revised terms of the deal, Lennar-Centex will cover costs of the review, expected to run into the millions of dollars, but will be allowed to delay a \$1.5 million payment to the Economic Development Research Institute due Aug. 15 until Vavrus signs off on the project.

"The positive aspect is that Lennar-Centex is moving forward," said Ed Sabin, a member of the research institute board.

Lennar-Centex will reimburse Palm Beach Gardens for the expenses the city already has incurred as a result of the review, called a development of regional impact. Sabin said that was a key to the reworked deal.

The research institute twice extended the deadline for Lennar-Centex to sign the contract, giving the builders time to negotiate with Vavrus. The second deadline was to have expired at 11:59 p.m. Monday.

Vavrus must agree to the project because he still owns the land, even though it is under contract to be sold for \$50 million.

Also Monday, the Palm Beach County Commission declined to consider exemptions to the county's comprehensive plan that are needed to move the project forward because of the uncertainties surrounding it.

County Commission Chairwoman Karen Marcus said that she thought it best to table the issue because there was no actual proposal, no actual developer, no actual project to give exemptions to yet — and might not ever be.

"We should just wait and see what happens with Mr. Vavrus," she said after the meeting.

Officials from Palm Beach Gardens left the special commission meeting with open mouths, astonished that after days of horse-trading over traffic standards and affordable-housing measures, their proposals for the Vavrus half of the planned biotech village were simply not brought up for a vote.

Mayor Eric Jablin said Vavrus needs to get out of the way and let the project move forward.

"Mr. Vavrus has been playing Hamlet for a long time," Jablin said. "It's about time he make up his mind."