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Grocery giant Publix found itself embroiled in conflict when it sought a long-planned expansion of its Sarasota warehouse. Here's how the story ends: Publix won the frustrating battle, but its opponents are still throwing darts.

Above: Sarasota attorney George Mazzarantani (left) and Jim Paulmann, Publix's consultant from WilsonMiller.

It's a Florida tradition—that little game we play at the 11th hour of a serious hurricane threat, desperately racing from store to store hunting for water, peanut butter, and “D” batteries.

But darn it, Publix is determined to spoil our fun by keeping its area stores comparatively well stocked with water and critical supplies. That's because Sarasota is home to one of the Publix grocery chains' eight major regional distribution centers. Every hurricane season, Publix clears out a huge section of grocery products in the warehouse and fills the area just with water.

For many hurricane seasons, it has seemed a noble but unnecessary (and expensive) measure, as the Gulf Coast has been spared a dead-on hurricane hit for decades. But on August 13, when Hurricane Charley hit, Publix's preparation paid off. Almost all of the water donated to the victims of Charley came from that distribution warehouse off Clark Road.

Ironically, Hurricane Charley hit one month to the day after Publix prevailed in a lengthy, frustrating battle to pursue a long-planned expansion of that very same warehouse. Had it not prevailed—local business people—shudder to think about it—the warehouse, those jobs, and that water may not have been here when we needed it most.

The story of Publix's battle to do what it arguably had the right to do without a battle is, unfortunately, all too common in Sarasota. So many developers and businesspeople have fought similar battles, with rancorous residents opposing their projects with such volume and ire that, for many businesses, it's not worth the fight. Some file lawsuits; others just write off Sarasota as too difficult and take their project (and its economic benefit) to another, more welcoming community.

Publix is one of the few who stuck it out. Sure, Publix had opportunities to sue, and other counties are constantly trying to woo Publix away. But Publix's corporate culture is one of being committed to the community, to its investment, and to the high road. So despite repeated assaults, Publix kept turning the other cheek, steadily pursuing its plans while trying to appease its opponents' concerns.

Publix's opponents say the road the grocery giant took was certainly not the high one, that it threw its economic weight around to get what it wanted while trampling the nearby residents. They are still planning their next move.

**This is a story about property rights, lies, and the Sarasota political process that frustrates so many. This is the Real Story.**

**The Setting** Land planning in Sarasota around the 1970s was less than brilliant—that was the anti-growth era of the “if we don’t build it, they don’t come” mentality. Indeed, poor planning is really to blame for the Publix warehouse conflict.

Our Sarasota tale is set on a large swath of land immediately south of Clark Road, between McIntosh Road and Beneva Road. Sawyer Road/Sawyer Loop Road intersects Clark Road and that hunk of land almost in the middle. In 1975, the west side of Sawyer Loop was zoned primarily residential, and the east side was zoned Planned Industrial Development (PID).

And right there is the recipe for disaster: Most land use planners would never put residential and industrial uses directly adjacent to one another. Most try to “step down” uses by putting medium-intensity uses like office or retail between industrial and residential, to buffer residences from the impact of the industrial use.



By 1981, Publix had its eye on the area. Publix is a long-range planning company; based on growth projections and goals, it knows what resources it will need many years down the road. The 60 acres on the east side of Sawyer Loop Road, with its industrial zoning and close proximity to I-75, fit nicely with Publix’s long-term regional dry goods distribution center needs. That year, an initial Development Concept Plan for the site, showing phases of development and expansion over time, was submitted to the county.

Publix bought the property in 1983 and Phase I of the facility, a large warehouse, was placed into operation in 1984. The Phase II expansion, taking the total warehouse space on the property to 362,560 square feet, was completed in 1988. Long-term plans for the property still included additional warehouse expansions and commercial outparcels on Clark Road.

In 1989, Sarasota County’s comprehensive plan included that PID district in the Major Employment Center that straddles Clark Road; it later became part of the Clark Road Corridor Plan as well. The county’s plan for the area to serve industrial and commercial uses was clear; Publix’s plans to expand its warehouse when the need arose were also clear.

**The Antagonists** In the early 1980s, several residential neighborhoods were approved for the land west of the Publix property. The eastern border of Lakeshore Village runs along Sawyer Loop Road, separated from the road by landscaping. The rear of a couple of lots in both Beneva Oaks and Gulf Gate East are separated from Sawyer Loop Road by a small slice of land. The build-out in these neighborhoods began in the mid-1980s.

By the 1990s, the residents of these neighborhoods knew that the adjacent industrial use, of which Publix was only one part, was not their pre-

ferred neighbor. Aside from Publix, the surrounding area was zoned for additional commercial and industrial uses, many of which were not yet built. But the zoning and comprehensive plan established these uses; there was not much the neighbors could do about it.

In law and public policy, there is a concept called “coming to the nuisance”: People who move in next to an existing situation are presumed to know about it and they don’t have the right to then complain about it. The opponents of Publix’s expansion plans moved into the adjacent neighborhoods after the Publix property was zoned for industrial use; essentially all arrived after the facility was up and running.

But the neighborhood opponents, led by a handful of individuals, disagree. Arguably the ringleader of the group is Susan Levy, a resident of Beneva Oaks whose determination and passion for the cause is clear. At a time when apathy often rules the day, people like Levy stand out—determined to stand up for their rights and speak out against what they perceive as injustice. But the neighborhood opponents became infected with a virus that infects so many similar groups—their claims become laced with hyperbole and misstatements of fact, and therefore begin to lose credibility.

For example, Levy told *SRQ* that she built her house in 1979, so she was actually there before Publix’s facility. But there are two problems with Levy’s claim. First, the Publix land was zoned for industrial use in 1975, so the industrial zoning was there first. Second, Sarasota County Property Appraiser records show that Levy and her husband bought their property in Beneva Oaks on January 1, 1987 and built their house on that property in 1988.

Levy also told *SRQ* that when she purchased her home, Sarasota County had an ordinance in place that specifically prohibited Publix from operating the warehouse at night. She says that she knew of that ordinance when she purchased her home, relying on it to protect her from the noise of a 24-hour warehouse operation. However, Levy says, heavily hinting at conspiracy, Sarasota County repealed that ordinance without public hearing in 1997, removing her protection.

The original ordinance Levy references, No. 72-66, explicitly prohibited nighttime operation of five types of businesses including construction and landfill operations—it did not prohibit nighttime operation of facilities like the Publix warehouse. Moreover, No. 72-66 was repealed in 1976 by Ordinance No. 76-52, which enacted some broader, more general sound regulations but also did not prohibit Publix from operating at night. The 1976 ordinance was re-enacted (not repealed) with the same language in 1997 by Ordinance No. 97-079. In other words, none of the ordinances to which Levy could be referring provided her the “protection” she claims. Levy is an intelligent citizen, validly engaging in the public discourse. But these are merely two examples of the types of exaggerated claims that earmarked the neighborhood opponents’ position throughout the battle.

It is difficult enough to face fierce, vocal opposition in public hearings. It is exponentially more difficult to do so when the opposition, deliberately or not, veers from the facts.

#### The Plot Twists

In August 2002, Publix filed an application with the county to build the Phase III expansion, which would add 161,949 square feet to the warehouse. The application also sought approval for the remainder of Publix’s long-term plans for the property—an additional 245,708 square feet of warehouse space, additional parking, and 32,000 square feet of outparcels like convenience stores. **next page >>**

Publix envisioned building the Phase III expansion immediately; the rest would go up when needed over the next 10 years. Rather than come back piecemeal, seeking approval every time it wanted to implement another part of the overall plan, Publix sought to have the remainder of the project approved at one time, in the interest of efficiency.

The application seemed routine. It did not require a comprehensive plan amendment. It did not require a rezoning. It was consistent with the master plan that had been filed with the county, and used by the county for its own planning purposes, for almost 20 years. It should have been a no-brainer.

It wasn't.

The zoning administrator at the time felt the plan needed some clarification. His uncertainty forced Publix to go all the way back through the public hearing process to get approval. Still, county staff and Publix believed it would be a simple process. After all, most thought

that Publix was only seeking to do what it already had a legal right to do.

But it wasn't simple.

The public hearings on the Publix expansion gave neighboring residents the open door they needed to speak out against the increasing commercial and industrial uses surrounding their properties. They banded together under the leadership of Levy and others and hit the county commissioners, planning commissioners, and county staff with a deluge of phone calls, emails, and letters, alleging various claims such as excessive noise and dangerous traffic conditions created by the existing Publix operation. If the existing facility is already a problem, the neighbors pressed, wouldn't an expanded facility be worse?

Publix immediately held neighborhood meetings, including inviting the neighbors to tour the facility, so Publix could try to address their concerns. But that did not satisfy the neighbors, whose complaints convinced the county

Planning Commission, in the early weeks of 2003, to recommend, by an 8-to-1 vote, that the county commissioners deny Publix's request. It was as shocking a triumph for the neighbors as it was a blow to Publix.

Publix immediately circled its wagons to strategize prior to the county commission hearing that would decide its fate. Sarasota attorney George Mazzarantani, hired by Publix after it discovered that this would not be simple after all, summarizes those strategy sessions: "We laid out all the options. There was discussion regarding a lawsuit, but it's fair to say that kind of action is not part of the Publix corporate culture. We discussed the option of just pulling out of the area; there was certainly a fear in the business community that Publix would just leave. But from a business standpoint, when you have a physical facility with room for expansion, and you've been planning for that expansion, it does not make business sense to just abandon it."

#### The Big Build-up

Publix's final decision surprised the jaded businesspeople in town. Rather than sue or say sayonara to Sarasota, Publix retreated. On February 10, 2003, before the request had a chance to go before the county commission, Publix withdrew it. Randy Roberts, Publix's Director of Corporate Affairs, told *SRQ*: "We view those neighbors as our customers. They were the major reason we withdrew."

After its withdrawal, Publix immediately went to work. Publix spent more than a year on research, planning, capital improvements, and so on to specifically address the neighborhood and Planning Commission concerns.

For example, to reduce sound from the facility, Publix spent more than \$250,000 to implement a new paging system, redesign the main entrance to reduce truck-turning noise, implement new procedures for trucks pulling away from the docks, relocate the truck staging area on the master plan, implement new procedures for forklift operation and dropping of pallets, limit hours of garage operation, and install new pneumatic gang boards.

But Publix didn't stop with on-site improvements. Tractor-trailers had historically parked **continued on page 92 >>**

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and idled on Sawyer Road near the Publix entrance, fueling neighbors' concerns. Publix initiated an action through the county's Traffic Advisory Council to implement a "No Parking, Stopping, or Standing" zone on the street. On May 10, 2004, the Traffic Advisory Council approved the proposal, which was approved by the commissioners on June 8. "We dealt with on-site, plus off-site issues," says Jim Paulmann, Publix's consultant from WilsonMiller. "When the neighbors voiced their concern about road parking, we said, 'Let's see what we can do about that,' even though the neighbors could have done that on their own."

After taking these measures, Publix was ready to re-file its expansion request, but the neighbors still resisted; emboldened by their previous "win," they wanted more. "They wanted a wall (along the west side of Sawyer Loop)," says Walt Engle, Senior Counsel of Publix in the corporate headquarters. "That would have been really expensive and, according to the experts we hired to evaluate that option, it would not have alleviated their concerns."

"We did what we could do," says Roberts. "At the end of the day, it came down to economics and business. We knew the neighbors were not completely satisfied, but we also knew the major steps we had taken. No matter what, the fact is that you have residential neighborhoods backing up to an industrial complex."

After it re-filed its petition, Publix held another neighborhood meeting on January 28, 2004, to show the neighbors all it had done to address their concerns. The neighbors were unimpressed. "Putting a 'quiet' sign on the premises? Please . . ." says Levy. "When you are doing things that are voluntary, that's not really anything. They don't work. Asking people to be quiet and turn down radios? That fluctuates. We wanted something concrete. The things that they did were very laughable. We got nothing major given to us; no substantial gains were made."

On February 26, 2004, Mazzarantani sent personal letters to Levy and the other opposition leaders, requesting personal meetings to discuss their concerns. The letters went unanswered; despite the fact that copies of those letters are in the county's public file, Levy denies that any Publix representative asked to meet with her. **continued on page 94 >>**

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Instead, the neighbors resumed their letter-writing campaign. Commissioners received hundreds of letters, the majority opposing Publix's expansion. The strident accusations ensured that the county staff left no claim uninvestigated. For example, the neighbors insisted that warehouse operations violated the sound ordinance, despite test results to the contrary. County Commission Chairman Jon Thaxton says: "The Board insisted that staff check and double check for sound violations."

Publix held its breath on June 3, 2004, when the Planning Commission, whose previous denial caused a firestorm, voted to approve the expansion by a slim 5-4 vote after a hearing that had stretched into the early hours of the morning.

Publix geared up for the final county commission hearing; the neighbors' emails increased in frequency, urgency, and drama.

The county commissioners decided to determine the facts for themselves. "I got up at 5 am, drove out to the neighborhoods, sat in my car, read the paper, and listened for the warehouse sounds," says Thaxton. "I went out with the sound crew one night when we were working on the sound ordinance, and I asked them to swing by Publix at midnight one night to listen and check the sound."

The other commissioners also made similar individual trips, often unannounced and in the wee hours, to the Publix facility and the surrounding neighborhoods. On July 13, 2004, after about a four-hour-long public hearing, the commission approved the expansion unanimously.

Levy insists the whole matter was loaded against her side. "Publix got a strong exception because they are economically something that Sarasota County wants to keep. The county's poor planning and zoning is destroying everything, and they won't fix it or make it right."

Thaxton, appreciating both sides' perspectives, offers his observation: "This was not a comprehensive plan amendment and it was not a rezoning. It was already done, already zoned. We did nothing more than approve a site plan. To assume that this would remain vacant land is incomprehensible, especially considering its value. Publix has been a pretty good citizen. They are good to work with. If it ain't Publix (building industrial on this site), it will be someone else, and I would bet it wouldn't be as flexible and easy to work with as Publix. Publix did not threaten us; the county simply has no footing here. Once the zoning becomes part of law, it's yours. The fact that this was a 5-0 vote is a testament against the theory that he who screams the loudest wins."


### The Moral of the Story

Publix executives expressed appreciation for the county commissioners' serious evaluation of the situation. "They really thought about it," says Mazzarantani. "They pushed us to the wall and queried all of it. In the end, they weighed all the options and saw this was the right thing to do for the county."

Publix's Senior Counsel Engle tempers that with his observations: "As much praise as we have for the commissioners and staff, Sarasota should look at the process to see why the commissioners had to go through this. There should be a process to allow review of what we believe we are legally entitled to do without all of this. My advice for others is to make sure things are very clear going forward—to make sure your future plans are clearly covered. We had expected going forward years ago that we would be able to do this long-range planning without all of this."

Businesspeople in Sarasota who have endured a similar process share Engle's frustration. "We in Sarasota are starting to feel that we have to do more and more ground work and be more communicative with the decision-makers before the formal process," says Mazzarantani. "The process can be subject to abuse and misapplication by opponents, who can send letters and make false statements without any penalty, then we have to spend our presentation time addressing those accusations. They can blanket the record with hours of accusations and make us look like the bad guys. At some point, it's got to stop. This situation risks further development in the county because people hear about it and they hear that it's hard to get through the process. We have to stop rewarding bad behavior."

For Levy's part, she and her neighbors are talking about organizing a boycott against Publix. She is also still talking with county officials, trying to get the county to bolster the buffering between the neighborhoods and Publix, using a bond issue if necessary.

Amazingly, if Levy knocks on the door of any Publix representative – though that's a big 'if'—she will find it open. "Publix will never ignore them, and will never cut them off, because they are Publix customers," says Mazzarantani, a little in awe of his client. "Most companies would say 'pound sand,' or even go after them, but Publix gives them a forum." 



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