Royal Palm Waterway. Arvida also agreed to convey to the United States perpetual easements to a small portion of property “adjoining the Bridge on Camino Real on both the north and the south” and to “a tract of land beginning 300 feet south of Palm Parkway Road of an approximate depth of 38 feet.” Finally, Arvida agreed to reimburse FIND for its administrative costs in settling the litigation, which were estimated to be “between $200 and $1000.” For its part FIND executed a declaration restricting development of the Capone tract to single-family homes. In 1961, the peninsula became an island with the dredging of the Royal Palm Waterway.

The successful resolution of FIND’s litigation with Arvida over access to its peninsula-shaped property vindicated its position that the unity of title between the Capone tract and the adjoining Arvida land, both of which Mizner Development Corporation formerly owned, created a common law right of way of necessity in favor of FIND through the Arvida subdivision. The victory is also another rationale arguing against the notion that somehow the Town of Boca Raton was legally able to stop Giblin (or Capone) from making use of the tract in July of 1930 for lack of road access. Both the Arvida tract to the north and the Capone tract had been owned by the same person, Mizner Development Corporation, in the mid-1920s. Thus, not only was Giblin entitled to access to his Broward County tract because of the 1926 Mizner plat and the 1928 and 1930 Geist plats ultimately dedicating Twenty-ninth Street and other streets depicted on the submissions for public use, but the former Broward judge was also entitled to access by a common law right of way of necessity through Geist’s property.

In 1964, the federal government’s permanent easement for spoil disposal and maintenance terminated when the government, deciding it no longer needed the property, released its interest by a quitclaim deed executed in favor of FIND. A temporary spoil disposal easement to the east one-half of the island, which had been accepted by the Army Corps of Engineers on May 7, 1962, would expire on May 7, 1965.

**FIND Advertises Capone Tract for Sale**

In June, 1964, FIND advised Schine Enterprises, Inc. (successor by statutory consolidation to Schine’s Boca Raton Club, Inc.) that Capone Island was no longer needed for public purposes and that bids for the purchase of the island would be opened on August 20, 1965. FIND also notified Broward County commissioners that bids would be opened on that date; that development would be limited to single family dwellings; and, that there existed an “option” to buy the property. Given the conditions imposed on the sale, FIND received no satisfactory bids. The district’s plans for the sale of public lands including spoil islands like Capone Island, however, would generate considerable public furor, leading to increased efforts to limit the district’s authority over state-owned lands.

---

**Chapter Six**

**FIND’s Public Authority ‘Readjusted,’ Schine Enterprises Exercised ‘Option’**

On January 12, 1965, Florida Secretary of State Tom Adams criticized FIND’s spending practices, declaring that Florida “cannot condone the systematic liquidation of irreplaceable valuable real estate” and calling for a “readjustment” in FIND’s public authority. At that time, Adams was considered a “prime mover in the establishment of Florida’s integrated system of waterways.” Reportedly FIND was then refusing to exercise its taxing authority, “selling choice Gold Coast surplus waterfront properties to pay salaries and maintenance expenses.” Further, FIND was also apparently interested in selling the Capone tract for $500,860, its then appraised value.

Even before Adams’ statement the Broward County Commission had sent a resolution to the legislative delegation requesting that the sale of all public lands owned by FIND be halted and urging the acquisition of the Capone Island tract for a “public park.” Broward County Commissioner J. W. “Bill” Stevens was then quoted as saying that he had recommended several weeks before that the Commission adopt a resolution made by Martin County to abolish FIND but, in Stevens’ words, “it was dropped like a hot potato.” Sentiment for the abolition of FIND had apparently been building since the fall of 1964 when Martin County commissioners contacted Broward County to join Martin and seven other counties in calling for the dissolution of the district.

An April 8, 1965 newspaper account recites that County Commission Chairman John D. Easterlin was to appear before a FIND meeting in Titusville the following day to negotiate the acquisition of Capone Island. The article further reported that on January 15, 1965, FIND voted to “dedicate its surplus lands for parks to interested public agencies” after “a Ft. Lauderdale News series disclosing the FIND’s loose spending practices and sales of lands to pay salaries.” A few months later, a bill was passed in the Florida Legislature, which became law in June, 1965, banning the sale of any unused spoil areas without first offering them to the State for recreational purposes.

That law [Chapter 65-900, Laws of Florida] further mandated that FIND specifically “convey for recreational purposes without consideration” Capone Island to the “Trustees of the Internal Improvement Fund for the use and benefit of the outdoor recreational development council.”

On August 31, 1965, the Florida Cabinet approved a development plan for the Capone tract. Funds for development of that tract as well as another parcel were to come from a five percent tax levied against sporting goods at the wholesale level.
FIND to convey the Capone tract to the improvement fund trustees, subject to the possible option rights of the Boca Raton Club, Inc.; 2) that the Capone tract could be conveyed to the trustees for the use and benefit of the state Outdoor Recreational Development Council, but in view of the Declaration of Restrictions, the council trustees should be advised that such lands should not be used for general public park purposes unless and until Arvida Realty Co., Inc. shall give its consent by agreed amendment to the Declaration of Restrictions; and, 3) that FIND, as a matter of policy, could consider the bringing of a declaratory action in court for the purpose of resolving the matter under proper circumstances. Apparently acquiescing in chapter 65-900's mandate, in August of 1966, FIND entered into a "dedication agreement" with the Trustees of the Internal Improvement Fund for the use and benefit of the Outdoor Recreational Development Council. That agreement permitted the Council to "use and develop" Capone Island for "recreation and conservation purposes" for a period of ninety-nine years for one dollar. The agreement further made the Council's use of the property subject to 1) the obligation to provide the federal government with spoil disposal areas and a pipeline easement, and 2) the "option" or right of first refusal granted Boca Raton Club, Inc. The "dedication agreement" did not, however, convey fee simple title to the trustees; the agreement only transferred the right to use the property for ninety-nine years.

In January of 1967, responding to a legal question posed by Ney Landrum, Executive Director of the Florida Outdoor Recreational Development Council ("ORDC" or "the Council"), General Faircloth opined that the sixty-foot-wide easement given by Arvida for access to the Capone tract was "not restrictive, and on the contrary, is a general easement for right of way purposes for ingress and egress to the land described in the easement. The use to which the land will be put, as far as this easement is concerned, is not material." In 1968, the Council was considering the conveyance of its use agreement with FIND to Broward County. Requesting that the Florida attorney general provide still another legal opinion, Landrum asked whether or not there were any impediments to the Council transferring its recreational development rights in Capone Island to the county. General Faircloth advised that there were none. No assignment of development rights was ever made, however, even though there appeared to be some interest on the part of at least one Broward County commissioner in the proposal.

In June of 1968, the City of Deerfield Beach was taking steps to acquire right-of-way for a pedestrian bridge across the Hillsboro canal and planning to maintain the park after construction had taken place. At the time, a pedestrian-only, steel bridge was expected to cost $48,000. The ORDC's Ney Landrum suggested that "the county develop the park with financial assistance from the state, none of which could be used for maintenance." The next month, Landrum stated that the state was awaiting a response from the County Commission to an offer to use state and federal funds to construct the bridge. While the City of Deerfield Beach was
insisting on a pedestrian-only bridge, Landrum insisted that a vehicular bridge was necessary to accommodate emergency vehicles. County commissioners were also delaying a decision pending a determination as to who would maintain the park and provide police protection after the park was developed. In December of 1969, Florida Atlantic University Executive Vice President Philip J. Fleming wrote to Landrum to express the University’s interest in “ten or fifteen acres of land located at the Capone tract with a configuration of being on the island waterway and the canal to the West” for “a Marine facility.”

In February, 1970, the Broward County Commission authorized a plan for park development for submission to the state Department of Natural Resources, even though the right to utilize the Capone tract had not yet been officially granted to the county; the Commission also authorized the county parks director to apply for a $50,000 state grant for dredging the Royal Palm Waterway and for a matching federal grant “to aid in construction of a $180,000 bridge to the island.” Development of the park was then expected to cost $431,000. Commissioners also deferred action on a motion made by Commissioner F. R. (Jack) Humphries to name the park after Commissioner J. W. (Bill) Stevens, who, Humphries stated, “had been instrumental in negotiating with the state, the City of Deerfield Beach for promised services, and with property owners for bridge rights-of-way.”

Two months later, on April 7, 1970, the Broward County Commission unanimously passed a resolution “giving a five-acre portion of the Capone-Stevens Tract to Florida Atlantic University for their use for a Marine and Oceanographic Laboratory.” [emphasis added]

**Trustees Lease Tract to Broward, FAU Given Five Acres To Use**

In the summer of 1970, the Florida Legislature during an extraordinary session mirrored the action of the Broward County Commission by amending Section 6 of Chapter 65-900 to expressly provide that five acres of Capone Island “be made available by the board of trustees of the internal improvement fund for the establishment of a marine shore facility through the Florida Atlantic University Foundation, Inc. for the benefit of marine and other education programs including ecology, conservation, biology, and ocean engineering.” The legislation [chapter 70-449, Laws of Florida] did not mandate that the trustees enter into a formal lease with the Foundation; it only required that the trustees make five acres “available” for the establishment of a “marine shore facility.”

On November 17, 1970, the Florida Cabinet, acting as the Trustees of the Internal Improvement Fund, voted to lease Capone Island to Broward County for ninety-five years “for public park and recreation uses subject to Chapter 70-449, Laws of Florida [use of five acres by FAU], and completion of the county park plan within ten years.” On December 7, 1970, the improvement fund trustees formally leased the island to Broward County for ninety-five years, provided that the County complete a specified development plan within ten years, and provided further that the property be opened for public use within three years; part of that plan addressed the setting aside of a five-acre parcel for the FAU foundation.

The lease with Broward County also provided that no use be made of the property incompatible with the uses specified in the Dedication Agreement between FIND and the improvement fund trustees, which incorporated in that document the 1952 Option Agreement with Boca Raton Club, Inc. (Schine Enterprises) and FIND’s 1959 Declaration of Restrictions, which the District gave in exchange for the perpetual easement that Arvida had given over a Royal Palm Yacht and Country Club lot for bridge access to Capone Island. The Capone tract was tentatively named “Deerfield Island Park” for county park planning purposes.

In October 1970, actual park construction was expected to follow the erection of a bridge to the island by Broward County. Development, however, was then already slowing because of the necessity to deepen the Royal Palm Waterway on the north side of the island for increased boat traffic. Dredging had not yet been permitted by “the state department of Natural Resources, the department of Air and Water Pollution, the U.S. Army Corp of Engineers and . . . the Florida Inland Navigation District;” “full development” of the park was then expected to take “about 10 years.” Park development would soon further slow as a result of Schine Enterprise’s 1952 “option.”

**Schine Enterprises Announces “Bombshell”**

In December of 1970, Broward County was making plans to construct a bridge over the Hillsboro Canal so that park building vehicles could reach the island. Schine Enterprises’ Howard Miller announced that he had a “bombshell” to drop at the Boca Raton City Council meeting on the Royal Palm Waterway dredge request: Schine Enterprises had exercised its “option” to buy the island by tendering the sum of one dollar. A public hearing on Broward County’s dredge request was set for January 5, 1971, before the Boca Raton City Council.

FIND reacted quickly to the announcement. Its general manager, Colonel William Powers, asserted that the island had never been declared surplus and that the land was never sold; only the development rights had been transferred to the state. Accordingly, Powers argued, Schine could not legally exercise its “option.”

**FAU Plans $700,000 Research Facility: Broward County Plans Bridge Over Hillsboro Canal**

Meanwhile, in early 1971, FAU was making plans to build a $700,000 research facility on its five-acre portion of the island; its plan, however, was dependent on the building by Broward County of a bridge over the Hillsboro Canal to the island. In January, 1971, the Boca Raton City Council delayed approval of Broward County’s request to enlarge the Royal Palm Waterway; Broward planners
anticipated increased boat traffic on the waterway from the obstruction of the Hillsboro Canal by the proposed bridge. Residents along the waterway in Boca Raton’s Royal Palm subdivision, however, voiced opposition to the work, asserting that dredging the Royal Palm canal would damage their seawalls.305

In June 1971, Broward County Commissioners authorized parks director Carl Thompson to discuss with FIND the possibility of digging a canal through Capone Island to avoid opposition from Boca Raton to the county’s park plans. The proposed canal was to have been 120 feet wide and cut across the northern end of the island. Opposition was expected from Arvida, which then owned a fifty-foot wide buffer strip across the north end of the island. The proposal was intended to defuse Royal Palm residents’ opposition to Broward’s plans to dredge the Royal Palm Canal. It was expected to cost less to dig a new canal than to meet the Royal Palm residents’ demands for a dense foliage screen and the building of new seawalls.306

**Schine Files Suit in Federal Court, Judge Stays Action**

In October of 1971 Schine Enterprises instituted an action in the United States District Court, Northern District, Tallahassee Division, seeking a declaratory decree as to its rights under the 1952 Option Agreement with FIND.307 On May 24, 1972, U. S. District Judge David L. Middlebrooks would enter an order staying the proceedings pending the submittal of the questions presented to the courts of the State of Florida, reasoning in part that one of the issues for determination was a question of public policy involving the disposition of state lands.308

Meanwhile, in November 1971, the Broward County Commission directed Lee Hatfield of the engineering firm Williams, Hatfield & Stoner to travel to Juno Beach to investigate the possibility of buying an antique turn bridge there, which had been scheduled for replacement, for use as access to the island from Deerfield Beach.309

In January of 1972, with Broward Commissioner Stevens expressing “discouragement” over the delays, Broward officials were considering the possibility of using a barge or ferry. Park plans were already complete, and money was available for the first phases, including construction of a bridge; however, the County was still embroiled in disputes with Royal Palm residents over the proposed dredging, and the Schine litigation was just beginning to heat up.310

**Schine Begins State Court Action**

As a consequence of Judge Middlebrooks’ May 24, 1972 order staying Schine’s federal lawsuit, on August 2, Schine Enterprises instituted an action for declaratory decree in Leon County Circuit Court in Tallahassee, seeking a judicial declaration as to its rights under the 1952 option.311 The state defendants, including the internal improvement fund trustees, the Florida Department of Natural Resources (successor to the Outdoor Recreation Development Council),312 FIND, Broward County, and the FAU Foundation, Inc., responded to the suit by alleging that Schine was not entitled to any relief because FIND had never agreed to convey "fee simple title" to anyone; Schine’s "option," or more properly a right of first refusal, they argued, could not have been exercised.313

On January 19, 1973, Leon County Circuit Judge Ben Willis entered a judgment declaring that "only when there was a disposition on the part of the owner [FIND] to separate this property [Capone Island] from public ownership and control and return it to private ownership would there be a right in Schine to acquire
improvement fund trustees; and, 3) that the legislation did not deprive Schine of property without due process of law because no third party had made a satisfactory purchase offer and the dedication agreement between FIND and improvement fund trustees was not a transfer or conveyance within the meaning of the Option Agreement. 218

The litigation finally concluded on January 25, 1975, when the Tallahassee federal court, echoing the state appellate court ruling, entered summary judgment against Schine Enterprises on its federal complaint, and no appeal was taken. 219 Perhaps adding salt to Schine Enterprises’ wounds, on February 18, 1975, ten years after Schine attempted to exercise its option to purchase Capone Island, FIND returned Schine’s never-cashed 1965 check for one dollar, which the firm had tendered at the outset to perfect the “exercise” of its “option.” 220

Leon County Circuit Judge Ben Willis who ruled against Schine’s Enterprise’s attempt to exercise its “option.”

it.” 234 The Tallahassee jurist further stated that “Schine still retains the right to purchase this property under the terms of its agreement if and when the Capone tract shall be available for private acquisition and the state through its agencies or public bodies shall receive legislative authority to so dispose of it.” 235

Meanwhile, a year later, in October 1974, Arvida Corporation conveyed its ownership of the fifty-foot strip of the northern portion of the island to the Royal Palm Improvement Association, the non-profit homeowner’s association for the Royal Palm subdivision. 236

Schine Appeals Willis Decision

Schine Enterprises appealed Judge Willis’ decision to the First District Court of Appeal, which affirmed the judgment of the trial court in March, 1974. 237 The Tallahassee appellate court held: 1) that the 1952 Option Agreement was in the nature of a right of first refusal, dependent upon FIND receiving a satisfactory offer to purchase by a third party; 2) that Schine Enterprises’ rights were not impaired by the 1965 special legislative enactment requiring FIND to convey the tract to the internal improvement fund trustees; and, 3) that the legislation did not deprive Schine of property without due process of law because no third party had made a satisfactory purchase offer and the dedication agreement between FIND and improvement fund trustees was not a transfer or conveyance within the meaning of the Option Agreement. 218

Chapter Seven

BROWARD COUNTY DEVELOPS DEERFIELD ISLAND PARK

Even though the county had been tied up in litigation over the island from 1971 until January of 1975, the county still budgeted $100,000 each year, beginning with 1970, for initial work on the property because the 1970 internal improvement fund lease required the county to provide general public access to the park within three years and to complete a specified development plan within ten years. 221 While a proposed park was thought feasible until April of 1974, 222 opposition to development arose from the City of Deerfield Beach and a preservationist group, Society for the Preservation of Capone Island, whose general counsel, J. Clinton Scott, resided on the other side of the Royal Palm Waterway in the exclusive Royal Palm Yacht and Country Club subdivision. The Boca Raton city council also opposed the development, passing a resolution urging FIND and the internal improvement fund trustees that the island “be allowed to remain in its natural state as a wildlife conservation wilderness.” 223

A November, 1974, $20 million general obligation parks bond issue failed to gain voter approval. 224 The opposition of Club residents apparently was waning by September, 1974, when residents were considering lifting the deed restrictions on Capone Island so that the property could be developed legally as a park. 225

Almost a year later the Broward County Commission voted to ask the State to approve a $2.5 million park master plan; a previous plan to develop a $3.4 million park with a large marina and recreational facilities had drawn heavy opposition from area residents. 226 By January, 1976, the County was formally requesting that the State grant additional time for park development and for an amendment to the park development plan to reflect proposed changes made necessary by the 1959 deed restrictions. 227 The Deerfield Beach city commission, however, passed a resolution urging that the County Commission “assign its interest in the lease agreement of Deerfield Island to the City of Deerfield Beach.” 228 One account has it that the County Commission intended to spend “$6 million” in 1974 in developing the park, but by August 1977, the budget had been reduced to “$600,000.” 229

In March, Deerfield Beach City Commissioner William Lattin asked the County Commission to return its right to develop the property to the State, insisting that the county had failed even to formalize an agreement for the Boy Scouts to utilize the island. The county resisted that attempt, instructing its attorneys to formalize an agreement in “two weeks.” 230

Two months later, Broward County Commissioner Stevens advocated a minority view that the county reconsider its plan to develop the park and instead return the island’s lease to the state. On the other hand,