

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CRYSTAL RIVER PROTECTIVE)
ASSOCIATION, INC., et al.,)
)
Petitioner,)
)
vs.) CASE NO. 76-1102
)
DEPARTMENT OF ENVIRONMENTAL)
REGULATION and CENTRAL)
DEVELOPMENT COMPANY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was held before Diane D. Tremor, Hearing Officer with the Division of Administrative Hearings, in the City/County Building Auditorium, 123 N.W. Highway 19, Crystal River, Florida, commencing at 9:30 a.m. on July 27, 1977 and continuing on July 28 and 29, 1977. Upon agreement of all parties, the captioned matter was consolidated for hearing purposes with Case Nos. 77-849 and 77-850 (involving the application of the Banana Island Recreation Association, Inc. for a permit from the Department of Environmental Regulation to construct a boardwalk), Case No. 76-1103 (involving the application of Florida Power Corporation for a permit from the Department of Environmental Regulation to install power lines and poles) and Case No. 77-960 (involving the granting of consent from the Department of Natural Resources for the proposed bridge, power poles and lines and/or boardwalk). Separate recommended orders are being entered for Case Nos. 77-849 and 850, 76-1103 and 77-960.

APPEARANCES

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APPEARANCE OF THOSE INVOLVED IN OTHER CONSOLIDATED CASES

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For Florida Mr. H. A. Evertz, III
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FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, as well as the Hearing Officer's personal view of the subject premises, the following relevant facts are found:

1. In April or May of 1974, William M. Lyons, as president of Central Development Company, submitted an application for a permit to construct a 20 foot wide, 172 foot long concrete bridge across sovereign land connecting Parker Island in King's Bay with a mainland lot. Both the mainland lot, known as Lot 20, Parker Haven, and Parker Island are owned by Central Development Company. The application contains specific plans for run-off control.

2. In 1975, various studies were performed by representatives of different environmental agencies concerning the proposed project. Representatives from the respondent Department of Environmental Regulation concluded that the bridge should cause no significant direct degradation of or adverse effect upon the water quality of King's Bay. The Director of the Division of Environmental Permitting therefore recommended the issuance of a permit and water quality certification following public notice of the project. In February of 1975, the Chief of Survey and Management of the Department of Natural Resources conducted a biological and hydrographic assessment and found that "the proposed bridge construction would eliminate a limited area of vegetated bottoms but would not, in itself, significantly affect aquatic biological resources," and that "it is improbable that the proposed bridge construction . . . would have significantly adverse hydrographic effects." The Game and Fresh Water Fish Commission had no objection to the bridge itself, but did express concern over the future development of Parker Island.

3. The petitioners herein are citizens and property owners in the area and have requested a hearing on the permit application. The Department of Environmental Regulation forwarded the petition to the Division of Administrative Hearings, and the undersigned Hearing Officer was duly designated to conduct the hearing. Upon the agreement of all parties, the hearing was consolidated with other cases involving permits for projects in the King's Bay area of Crystal River.

4. The prime issue upon which testimony was adduced at the hearing was the effect of the proposed bridge upon navigation. The waters of King's Bay are

affected by the ebb and flow of the tide. The bridge is to be approximately four and one-half feet above the mean high water level. The pass between Parker Island and the mainland Lot 20 is approximately 250 feet wide and is relatively shallow, ranging from a low of one foot to a high of approximately four and one-half feet deep, depending upon the tide. Net fishing and gigging in that area are prohibited. Power boats, air boats and small sailboats presently utilize the pass, but large sailboats would not prudently use this pass for safety reasons. Small power boats with windshields and/or covered tops would probably not be able to use the pass during high tide if the proposed bridge at a height of four and one-half feet is constructed.

5. A mean high water survey, per se, was not conducted by or on behalf of the applicant. Rather, the applicant relied upon a bulkhead map which establishes a bulkhead line around Parker Island (Exhibit 9). This document describes mean high water as +1.2 elevation and the metes and bounds description of the bulkhead line is followed by the words "all being along the mean high water line."

6. The King's Bay area and the springs located therein provide a winter home for manatee, an endangered species. During high tides, manatees have occasionally been observed in the pass between Parker Island and Lot 20 on the mainland. While further development and degradation of the area could affect the manatee population, the placement of the bridge itself would not affect the navigation of the manatee travelling in that area, though some would balk or be hesitant around the bridge. One of the greatest hazards to the manatee is injury or even fatality from boat propellers and collisions with fast moving power boats. A boat travelling at five miles per hour should present no problem to the manatee.

7. Several residents owning waterfront lots on King's Bay testified that their view of the open water would be obstructed by the existence of the proposed bridge.

8. The purpose of constructing the bridge is obviously to provide a means of access from the mainland to Parker Island. Parker Island is about five and one-half acres in size and is owned by Central Development Company. Preliminary land use plans have been developed for an environmentally oriented low density subdivision on Parker Island. The conceptual plans include the sale of eleven lots, one-third acre each, for residential purposes. Each lot owner would only be permitted to develop 5,000 square feet of the lot, with the remainder of the lot to be retained in an undisturbed state. The preliminary plans call for underground utilities, no seawalls and a centralized dock. It must be emphasized that these are preliminary or conceptual plans for development of the Island, and Central is in no way bound by said plans.

9. On or about April 5, 1977, the Board of County Commissioners of Citrus County passed a resolution declaring that the area known as King's Bay and the islands located therein was an area of critical habitat, and that any man-made changes in the area be subject to public hearings and comply with all Citrus County ordinances, resolutions and regulations. Lot 20 on the mainland is zoned R-1AA which permits single family dwellings, municipally owned or operated parks and playgrounds, golf courses, certain temporary signs and certain conditioned accessory uses. Central Development Company has not appeared before the zoning board to seek a zoning change or exception for Lot 20.

10. Central Development Company has submitted to the Department of Natural Resources an application for an easement for its bridge construction. This is

the subject matter of Case No. 77-960, for which a separate recommended order is being entered.

CONCLUSIONS OF LAW

11. The construction of a bridge across sovereignty land and navigable water is clearly subject to the permitting requirements of Florida Statutes Chapters 253 and 403, specifically Sections 253.123(2) and 403.087(1). These permitting provisions fall within the jurisdiction of the respondent Department of Environmental Regulation. Florida Statutes 20.261(6). As previously ruled by an Order entered on June 24, 1977, the provisions of Florida Statutes Section 253.124, requiring local approval for construction which adds to or extends existing land, is not applicable to the proposed bridge construction. Prior to the issuance of any permit by the Department of Environmental Regulation, the applicant must receive and exhibit to the Department of Environmental Regulation the required easement or other form of consent from the Board of Trustees of the Internal Improvement Trust Fund authorizing the construction. Florida Statutes Section 253.77(1976).

12. The pertinent portions of 253.123(2) read as follows:

"(2) The removal of sand, rock or earth from the navigable waters of the state as defined in Section 253.12 and the submerged bottoms thereof by dredging, pumping, digging, or any other means shall not be permitted except in the following instances:

* * *

(d) For other purposes when, but only when, the board of trustees has determined, after consideration of a biological survey and an ecological study and a hydrographic survey, if such hydrographic survey is required by the board, made by or under the supervision of the Department of Natural Resources of the area from which such sand, rock or earth is proposed to be removed, that such surveys and study show that such removal will not interfere with the conservation of fish, marine and wildlife or other natural resources, to such an extent as to be contrary to the public interest, and will not result in the destruction of oyster beds, clam beds or marine productivity, including but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life or natural shoreline processes to such an extent as to be contrary to the public interests."

With respect to the application for construction of the subject bridge, biological and hydrographic assessments were performed and it was concluded that the bridge construction would not, in itself, significantly affect aquatic

biological resources. The petitioners in this case have failed to present sufficient evidence to rebut such a finding. The only evidence pertinent to this issue was that purporting to show the adverse effect of the bridge upon the manatee. However, the evidence adduced on this subject was that the manatee only occasionally travel through this channel and that only some of these would be hesitant to travel under the bridge. Those which refused to go near the bridge could travel around the other side of Parker Island to their destination. Inasmuch as boats in the area would in all probability reduce their speed when approaching the bridge, danger to the manatee from fast moving boats would be eliminated.

13. Florida Statutes 403.087(1) provides that:

"No stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule. In no event shall a permit for a water pollution source be valid for more than five years. However, upon expiration, a new permit may be issued by the department in accordance with this act and the rules and regulations of the department."

The studies performed by representatives of the Department of Environmental Regulation resulted in the conclusion that the bridge should cause no significant direct degradation of or adverse effect upon the water quality of King's Bay. Again, petitioners failed to present any evidence tending to illustrate that the bridge itself would degrade the surrounding water or air quality.

14. It is the petitioners' contention that the bridge will create a navigational hazard and/or result in a serious impediment to navigation, and therefore, pursuant to F.A.C. Rule 17-4.29(6), the Department of Environmental Regulation must not issue the permit. The bridge is proposed to be built at a height approximately four and a half feet above mean high water. Although the pass between Parker Island and Lot 20 is narrow and often quite shallow, the evidence does illustrate that owners of boats larger than four and one-half feet in height do presently and frequently utilize this pass. It must be recognized that another access around Parker Island is available to boaters and thus the bridge does not present a hazard or serious impediment to navigation. However, it would not appear to be unreasonable to require the applicant to increase the height of the bridge by two feet, thus making it six and one-half feet above the mean high water level.

15. Several of the landowners in the King's Bay area testified that the proposed bridge would interfere with their riparian right of an unobstructed view of the water. After a careful consideration of such testimony, the photographs received into evidence, a personal view of the premises and the case law on the subject, the undersigned Hearing Officer concludes that the bridge would not significantly interfere with these riparian rights. The landowners complaining of such interference are located at a far enough distance from the proposed bridge that their view of the water and the pass should not be severely interrupted.

16. Petitioners have raised the issue as to whether the applicant conducted the required mean high water line survey. Inasmuch as Central Development Company accedes that the bridge project requires permitting and has in fact submitted the necessary applications for such permitting, the relevance of this issue is somewhat obscure to the Hearing Officer. However, the document relied upon by the applicant (Exhibit 9) clearly illustrates that the mean high water line is the same as the bulkhead line which is described with particularity.

17. The matter of the zoning requirements for Lot 20 or Parker Island are matters between the applicant and the zoning board of Citrus County, and is therefore not considered in this recommended order. The same is true with any public hearings required by the County. Neither of these local requirements are conditions precedent to the issuance of a permit by the Department of Environmental Regulation.

18. Finally, many of the witnesses opposing issuance of the bridge permit appeared to be more concerned with the adverse effects upon the water quality, vegetation and marine life by the proposed development of Parker Island than by the bridge itself. The proposed development of the Island is certainly a relevant and substantial area for concern, and the bridge cannot be wholly considered in isolation from its purpose or destination. However, the plans for development of Parker Island are nothing more than conceptual and preliminary at this state and therefore they cannot be the subject of any findings or conclusions. To consider the proposed development of the Island and its resulting environmental impact would be speculative and beyond the scope of the application for the bridge permit presently before the state regulatory agencies.

RECOMMENDATION

Based upon the findings of fact and conclusions of law recited above, it is recommended that the Department of Environmental Regulation issue to Central Development Corporation a permit to construct a concrete bridge between Lot 20, Parkers Haven, and Parker Island subject to the following conditions:

1. The height of the structure above mean high water level be increased from four and one-half (4 1/2) feet to six and one-half (6 1/2) feet; and

2. Receipt by the applicant and exhibition to the Department of Environmental Regulation of the required easement or other form of consent from the Board of Trustees of the Internal Improvement Trust Fund authorizing the proposed use of sovereignty lands, as required by Florida Statutes 253.77 (1976).

Respectfully submitted and entered this 16th day of September, 1977, in Tallahassee, Florida.

DIANE D. TREMOR, Hearing Officer
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