

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CALOOSA PROPERTY OWNERS)
ASSOCIATION, INC.,)
)
Petitioner,)
)
vs.) CASE NO. 82-1937
)
SOUTH FLORIDA WATER MANAGEMENT)
DISTRICT; CALEFFE INVESTMENT,)
LTD.; and WORTHINGTON)
ENTERPRISES, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted in the above matter on December 14, 15 and 16, 1982, in West Palm Beach, Florida. The following appearances were entered: Tracy C. Sharpe, West Palm Beach, Florida, appeared on behalf of the Petitioner, Caloosa Property Owners Association, Inc.; Terry E. Lewis, Tallahassee, Florida, appeared on behalf of the Respondents, Caleffe investment, Ltd., and Worthington Enterprises, Inc.; and Irene Kennedy Quincey, West Palm Beach, Florida, appeared on behalf of the Respondent, South Florida Water Management District.

Caleffe Investment, Ltd., and Worthington Enterprises, Inc., have filed an application with the South Florida Water Management District (SFWMD) for conceptual approval of a surface water management system for a proposed industrial park known as Palm Beach Park of Commerce. SFWMD issued notice of its intent to grant conceptual approval. The Petitioner, Caloosa Property Owners Association, Inc., filed a Petition for Formal Administrative Hearing. The Petition was forwarded to the Division of Administrative Hearings by SFWMD on July 15, 1982. The final hearing was originally scheduled to be conducted commencing on January 18, 1983. Upon request of the applicants, the hearing was rescheduled to be conducted as set out above on an expedited basis.

At the hearing the applicants called the following witnesses: Howard L. Searcy, a consulting engineer in private practice and an investor in the proposed industrial park; Robert D. Blackburn, a consulting biologist; Robert Goodrick, a research biologist employed with SFWMD; Charles Allen Hall, an engineer employed with SFWMD; and Richard Rogers, a registered civil engineer employed with SFWMD. The Petitioner called the following witnesses: Arthur R. Marshall, a consultant in environmental matters in private practice; James H. Hartwell, a consulting hydrologist in private practice; and Paul Parks, a chemist in private practice. SFWMD presented evidence through the testimony of witnesses called by the other parties.

A portion of the hearing was dedicated to testimony from members of the public at large. Robert E. Leis, the President of Wind in the Pines Homeowners

Association; and John C. Jones, the Executive Director of the Florida Wildlife Federation, testified as members of the public at large.

The following exhibits were received into evidence: Exhibits 1 through 11 offered jointly by the applicants and SFWMD, Petitioner's Exhibit 1, Hearing Officer's Exhibits 1 through 5, and Public Exhibits 1 and 2.

A briefing schedule was established which ran from the date of the filing of the transcript of the hearing. The parties have submitted post-hearing legal memoranda which include proposed findings of fact and conclusions of law. The proposed findings and conclusions have been adopted only to the extent that they are expressly set out in the Findings of Fact and Conclusions of Law which follow. They have been otherwise rejected as not supported by the evidence, contrary to the better weight of the evidence, irrelevant to the issues, or legally erroneous.

ISSUES

The ultimate issue to be resolved in this proceeding is whether the applicants have offered reasonable assurance that their proposed surface water management system for the Palm Beach Park of Commerce would operate within the rules of SFWMD set out at Section 40E-4.301, Florida Administrative Code. The Petitioners specifically contend that the project as proposed would cause flooding on lands adjacent to the project, would have adverse impacts on surface and ground waters, and otherwise is inconsistent with SFWMD criteria. Applicants and SFWMD contend that the project meets applicable standards.

FINDINGS OF FACT

1. The applicants propose to develop an industrial park to be known as the Palm Beach Park of Commerce (PBPC) in western Palm Beach County, Florida. The proposed site is located on State Road 710 and State Road 711. The site is approximately 1,248 acres in size. PBPC proposes to accommodate a variety of commercial and industrial uses. Applicants are seeking conceptual approval of a proposed surface water management system. They are not at this time seeking permits from SFWMD which would allow construction of the overall system. The proposed system does not include plans for surface water management on sites within PBPC, but rather relates solely to an overall system.

2. Petitioner is an association of homeowners within a single family residential development known as Caloosa. The development is approximately 1,400 acres in size and consists of single family residences on approximately five-acre lots. The Caloosa development is located to the southeast of the proposed PBPC. Surface and ground water flows from the PBPC site toward the Caloosa development. Residents of Caloosa depend on individual wells for their drinking water.

3. The site of the proposed PBPC is primarily a flat, broad plain with wetland pockets and pine-palmetto flatwoods. Approximately 720 acres of the site is dominated by pine flatwoods. A bit more than 300 acres of the site is in agricultural land, either presently or recently under cultivation. Between 160 and 170 acres of the site are viable, productive wetlands. The wetland areas are inundated with water during a sufficient portion of the year to support predominantly wetland vegetation. The land slopes generally from the northwest to the southeast.

4. The proposed PBPC site is located within the Loxahatchee basin. Surface water from the site presently drains toward the southeast into the Caloosa canal. The Caloosa canal flows through the Caloosa development and ultimately discharges into the C-18 canal. The C-18 canal drains into the Loxahatchee River. Water from areas to the north and west of the proposed site presently drains onto the site and into the Caloosa canal. The proposed drainage system would carry water to the discharge point at the southeast corner of the site through a perimeter canal system. Water from the off-site locations would drain into the perimeter canal to the discharge point. On-site surface water would drain toward wetland pockets into the perimeter canal system or directly into the canal system. The proposed drainage system would preserve 135 acres of the wetlands presently located on the project site. These wetland areas have been incorporated into the surface water management system. Approximately 33 acres of wetlands would be filled. The wetland areas serve a significant function to preserve water quality, and to mitigate the loss of these wetlands, applicants propose to create a wetland area along the northern portion of the perimeter canal. This constructed wetland area would serve approximately the same water quality function as the wetland area that would be filled.

5. The proposed surface water drainage system is designed so as to retain the first one inch of runoff from any storm event through a system of swales. Thus, surface water runoff would cross grassy areas and percolate through the swale systems before entering the perimeter canal system. Such a system serves to filter most of the pollutants that would be carried into the surface water system as the result of a storm event.

6. The Caloosa canal is presently not able to accommodate flows that would result from the proposed PBPC surface water management system without flooding up to a storm event of three-day duration and 25-year return frequency. This would be a storm of such magnitude that it is likely to occur only once each 25 years over a three-day period. There are two existing bridges over the Caloosa canal which narrow the canal to only 16 feet in width. The narrow openings under the bridges presently cause flooding and erosion in the canal, which is generally 65 feet in width. At the discharge point of the Caloosa canal into the C-18 canal, there is a 65-foot wide steel sheet pile weir, downstream of the weir there are three 72-inch diameter pipes which discharge directly into the C-18 canal. These pipes are not adequate to accommodate flows that would be anticipated from the proposed PBPC as a result of a storm event of three-day duration and 25-year return frequency. There has been erosion in the Caloosa canal partially as a result of its sandy banks and partially because of the constrictions resulting from the narrow bridges. In order to assure that the Caloosa canal could accept discharges anticipated from the PBPC surface water management system, the bridges would need to be expanded to 60 feet in width, an additional 72-inch diameter pipe would need to be installed at the discharge point into the C-18 canal, and maintenance work would need to be performed on the Caloosa canal so that it could be restored to its uneroded condition. If these improvements are made in the Caloosa canal system, then the proposed surface water management system for PBPC is not likely to result in any downstream flooding except in the event of a storm event in excess of three-day duration and 25-year return frequency.

7. Design features of the proposed drainage system including preservation of wetland areas, creation of new wetland areas, and retention of the first one inch of storm water runoff prior to discharge into surface waters are known as "best management practices." SFWMD has a policy of accepting the implementation of best management practices as providing reasonable assurance that a surface

water system will not result in adverse water quality impacts. It does not appear that construction of the proposed surface water management system would of itself have any negative impact upon the quality of surface or ground waters.

8. There is potential for negative water quality impacts that would result from activities of individual, commercial or industrial tenants of PBPC. The applicants have agreed to prohibit certain uses within the proposed industrial park as a condition for receiving conceptual approval and to impose deed restrictions or restrictive covenants prohibiting specific uses on all property within PBPC. Uses which applicants have agreed to exclude are: breweries, fertilizer manufacturers, coal and petroleum derivation manufacturers, exterminator manufacturing and warehousing, and all chemical manufacturing including insecticides, herbicides and pesticides. Despite these restrictions, there are many potential commercial and industrial activities that could occur within PBPC that would involve the use of toxic substances which could have potentially devastating water quality impacts. The application for conceptual approval contemplates that each individual tenant within PBPC will need to obtain a permit from SFWMD for a surface water management system for their individual portion of PBPC. Each tenant would be required to establish a system which itself would retain the first one inch of runoff from any storm event. It is essential that individual tenants whose activities include the use of toxic substances be required to implement systems to assure that toxic wastes are adequately treated and disposed of properly and that systems are established to prevent accidents, and in the event of accidents, to deal with them on an emergency basis. The most potentially dangerous impact in water quality terms that might result from industrial uses is where toxic substances that are water soluble are used on the site. Such substances would not be filtered through percolation and could enter surface and ground waters. As a condition of approval, it is appropriate that all construction or operating permits be conditioned upon the implementation of control systems and emergency systems that reasonably assure that no individual user within PBPC would engage in activities that would be likely to result in violations of water quality standards.

9. It does not appear that the proposed surface water management system for PBPC would cause adverse environmental impacts. Most of the on-site wetlands will be retained, and those that will be filled are lower quality wetlands that will be replaced by the creation of wetlands along the perimeter canal system. Construction activities and activities on site after development will undoubtedly change wildlife habitat. The area of the proposed site is not, however, a unique wildlife habitat; and it does not appear that any species would be threatened with significant habitat reduction.

10. The proposed water management has been designed so that it can be effectively operated and maintained. The Northern Palm Beach County Water Control District has agreed to maintain the surface water management system. The district is a public entity that has personnel and expertise available to operate the system.

11. It does not appear that the proposed surface water management system would have any adverse impact upon public health or safety. It is possible that individual tenants depending upon the nature of their activities, could offer potential health and safety hazards. It is appropriate that such hazards be taken into account in the approval of surface water management systems for individual sites within the proposed park.

12. It appears that the proposed surface water management system is virtually as good a system as could be designed to accommodate an industrial park. The proposed use of the land as an industrial park is compatible with comprehensive plans and zoning regulations of Palm Beach County.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.57(1), 120.60, Florida Statutes.

14. Petitioner has standing to seek a formal administrative hearing with respect to this permit application. Section 120.57(1), Florida Statutes.

15. SFWMD has authority to adopt rules and regulations in support of its responsibilities to implement Part IV, Chapter 373, Florida Statutes, relating to management and storage of surface waters. Section 373.044, Florida Statutes. In its Rule 40E-4.021(2), Florida Administrative Code, SFWMD has defined a "letter of conceptual approval" as a surface water management permit approving the concept of a master plan for a surface water management system. Under the definition, a letter of conceptual approval is binding upon SFWMD and the applicant. SFWMD Rule 40E-4.041(2)(a), Florida Administrative Code, provides:

The District [SFWMD] issues three types of surface water management permits: letters of conceptual approval, construction permits, and operation permits. . .

(a) A letter of conceptual approval may be issued for projects that are to be developed in phases. A letter of conceptual approval does not authorize any construction.

In order to obtain a surface water management permit, including a letter of conceptual approval, an applicant is required to meet the conditions set out at SFWMD Rule 40E-4.301, Florida Administrative Code. The rule provides:

(1) In order to obtain a permit under this chapter, an applicant must give reasonable assurances that the surface water management system:

(a) provides adequate flood protection and drainage,

(b) will not cause adverse water quality and quantity impacts on receiving waters and adjacent lands regulated pursuant to chapter 373, Florida Statutes,

(c) will not cause discharges which result in any violation, in surface waters of the state, of the standards and criteria of chapter 17-3,

(d) will not cause adverse impacts on surface and groundwater levels and flows,

(e) will not cause adverse environmental impacts,

(f) can be effectively operated and maintained,

(g) will not adversely affect public health and safety,
(h) is consistent with the requirements of other public agencies,
(i) is, in the opinion of the District, the most publicly acceptable alternative available,
(j) will serve a proposed land use which:
1. for conceptual approvals, is compatible with the local government comprehensive plan or is compatible with the existing zoning for the area,
2. for construction and operation permits, is compatible with the existing zoning for the area,
(k) meets any applicable basin criteria in chapter 40E-41,
(l) will not otherwise be harmful to the water resources of the District, and will not interfere with the legal rights of others as defined in rule 7-40.07,
(m) is not against public policy, and
(n) will meet the general and specific criteria in the document described in paragraph 40E-4.091(1)(a).

16. SFWMD has adopted specific criteria for determining water quantity impacts of a proposed system in a document entitled "Basis of Review for Surface Water Management Permit Applications Within the South Florida Water Management District - December, 1982." See Rule 40E-4.091(1)(a), Florida Administrative Code. Paragraph 3.2.1.2 of the "Basis of Review" document provides:

Discharge--Off-site discharge is limited to amounts which will not cause additional adverse off-site impacts. These amounts are:
a. historic discharges, or
b. amounts determined in previous District permit actions, or
c. amounts specified in District criteria
(See Appendices 2 and 3).

Unless otherwise specified by previous District permits, District criteria or local government, a storm event of 3 day duration and 25 year return frequency shall be used in computing off-site discharge.

17. In determining water quality impacts, SFWMD has not sought to duplicate efforts of the Department of Environmental Regulation. Rather, the district has followed a policy of requiring implementation of "best management practices" in surface water management systems.

18. Under Rule 40E-4.381(1), Florida Administrative Code, SFWMD is authorized to impose reasonable conditions upon the issuance of permits. In its staff analysis of the PBPC proposed surface water management system, SFWMD proposed that twelve special conditions be attached to a letter of conditional approval. Applicants have agreed to accept these special conditions as a part

of a letter of conditional approval. The special conditions are attached to this Recommended Order as Appendix I.

19. With the imposition of the special conditions proposed by the SFWMD staff, and of three other special conditions, reasonable assurance that the surface water management system proposed for PBPC meets the requirements of Rule 40E-4.301, Florida Administrative Code, has been provided. These additional special conditions are as follows:

(a) That slumping and erosion within the Caloosa canal be corrected so that the Caloosa canal is able to accommodate the quantities of water that will be discharged from PBPC.

(b) That the applicants record deed restrictions or restrictive covenants which prohibit the following uses within Palm Beach Park of Commerce: breweries, fertilizer manufacturers, coal and petroleum derivations manufacturers, exterminator manufacturing and warehousing, and all chemical manufacturing including insecticides, herbicides and pesticides.

(c) That prior to the issuance of any construction permits, detailed plans be prepared for containing and disposing of toxic substances and for preventing such substances from entering surface and ground water systems. Emergency plans should also be established for dealing with any accidental release of toxic substances.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is, hereby,

RECOMMENDED:

That a Final Order be entered by the South Florida Water Management District issuing a letter of conditional approval to the applicants for the proposed surface water management plan for Palm Beach Park and Commerce and imposing the twelve special conditions set out in Appendix I to this Recommended Order and the three additional special conditions set out in Paragraph 7 of the Conclusions of Law set out in this Recommended Order upon the applicants.

RECOMMENDED this 23rd day of February, 1983, in Tallahassee, Florida.

G. STEVEN PFIEFFER
Hearing Officer
Division of Administrative Hearings
The Oakland Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of February, 1983.

COPIES FURNISHED:

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AGENCY FINAL ORDER

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SOUTH FLORIDA WATER MANAGEMENT DISTRICT

CALOOSA PROPERTY OWNERS
ASSOCIATION, INC.,

Petitioner,

vs.

DOAH NO. 82-1937

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, and CALEFFE INVESTMENT,
LTD., and WORTHINGTON ENTERPRISES,
INC.,

Respondents.

_____ /

FINAL ORDER

The Hearing Officer's Order came on to be heard before the Governing Board of South Florida Water Management District on the 14th day of April 1983.

The Governing Board has considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, dated February 23, 1983, Exceptions to Recommended Order of the Hearing Officer by Counsel for Petitioner, Caloosa Property Owners Association, Inc. with a certificate of service dated March 7, 1983, Reply to Exceptions to Recommended Order of the Hearing Officer, by Counsel for Respondents, Caleffe Investment, Ltd. and Worthington Enterprises, Inc., with a certificate of service dated March 10, 1983 and Exception to Recommended Order by Counsel for Respondent, South Florida Water Management District with a certificate of service dated March 9, 1983. Because the exceptions filed by Petitioner had the affect of disputing the Findings of Fact of the Hearing Officer, each of the members of the Governing Board was furnished a complete transcript of the Hearing held by the Hearing Officer, and each Governing Board member has read the transcript.

With regard to the Exceptions filed by Petitioner, the Governing Board acts as follows:

Exception Number 1 - Denied - the law allows the Hearing Officer to recommend modifications in the project as part of the Recommended Order.

Exception Number 2 - (A) Denied - the record reflects that the Caloosa Canal can be designed and maintained to avoid problems with erosion. (B) Denied - this is a Conceptual Permit and the record reflects safe guards against ground water contamination can be

established when tenants are known and before occupation of each parcel of the Palm Beach Park of Commerce.

Exception Number 3 - Denied - Conceptual Approval is all that is sought and the record reflects Caloosa Canal can be designed to accommodate the flows expected. This design would occur when a construction permit is sought for the entire water management system serving Palm Beach Park of Commerce if Caloosa Canal problems are not corrected at an earlier date.

Exception Number 4 - Denied - Water quality existing presently in C-18 (Loxahatchee River) would not, according to the record, be adversely affected by the Palm Beach Park of Commerce.

Exception Number 5 - Denied - there is evidence in the record that the design and location of the Palm Beach Park of Commerce is a "publicly acceptable alternative".

Exception Number 6 - Denied - the record indicates consideration of the legal rights of others.

Exception Number 7 - Denied - record indicates that the proposed Park of Commerce has necessary zoning, DRI approval and meets the requirements for Conceptual Approval of South Florida Water Management District.

Exception Number 8 - Denied - the record reflects testimony that the artificial wetlands will fulfill the function of natural wetlands.

With regard to the Exception filed by Respondent, South Florida Water Management District, the District acts as follows

(1) Exception Number 1 - Approved - a review of the record indicates no intention on the part of the Hearing Officer to delete the 10 limiting conditions imposed by the District in its recommendation for approval; therefore, the 10 limiting conditions are incorporated in this Order.

(2) Exception Number 2 - Approved - a review of the Findings of Fact (#8) of the Hearing Officer indicates his intent with regard to 7(C) of his Conclusions of Law is that detailed plans be prepared, at the time of issuance of construction permits for

individual lots, for dealing, with containment and disposal of toxic substances and prevention of such substances from entering surface and ground water

The Governing Board adopts the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, except as hereby modified:

(1) Modification of Paragraph 7 of the Conclusions of Law to read: "With the imposition of the limiting conditions, special conditions proposed by the South Florida Water Management District staff, and of three other special conditions, reasonable assurance that the surface water management system proposed for Palm Beach Park of Commerce meets the requirements of Rule 40E-4.301, Florida Administrative Code, has been provided." These additional special conditions are as follows:

(a) same as Hearing Officer's Recommended Order.

(b) same as Hearing Officer's Recommended Order.

(c) That prior to the issuance of any construction permits for individual lots, detailed plans be prepared or containing and disposing of toxic substances and for preventing such substances from entering surface and ground water systems. Emergency plans should also be established for dealing with any accidental release of toxic substances. Both the detailed and emergency plans shall have the prior written approval of the Department of Environmental Regulation.

The Governing Board orders the issuance of the subject permit in accordance with this Order.

DONE and ORDERED on this the 14th day of April, 1983 in Cape Coral, Florida.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD

(Corporate Seal)

BY: _____
Chairman

ATTEST:

By: _____
Secretary

FILED WITH THE CLERK OF THE SOUTH
FLORIDA WATER MANAGEMENT DISTRICT

ON April 14, 1983

BY Jean Guy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished TRACY C. SHARPE, ESQUIRE, Farish, Farish & Romani, P.A., Post Office Box 3887, West Palm Beach, Florida 33402; RANDALL E. DENKER, ESQUIRE, Lehrman and Denker Law Offices, Post Office Box 1736, Tallahassee, Florida 32302; TERRY E. LEWIS, ESQUIRE, Messer, Rhoads & Vickers, P.A., Suite 701 Lewis State Bank Building, Post Office Box 1876, Tallahassee, Florida, 32302-1876, and ALAN J. CIKLIN, ESQUIRE, Concourse Building, 8th Floor, 2000 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33409, by U S Mail, this 22nd day of April, 1983 and Irene Kennedy Quincey, Esquire P. O. Pox V, West Palm Beach, Florida 33402-4238.

Robert J. Grafton