

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM BYRD, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 95-4155  
 )  
 CITY OF TREASURE ISLAND and )  
 DEPARTMENT OF ENVIRONMENTAL )  
 PROTECTION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A hearing was held in this case in Treasure Island, Florida on October 25, 1995, before Arnold H. Pollock, a Hearing Officer with the Division of Administrative Hearings.

APPEARANCES

For Mr. Byrd: Ronald Schnell, Esquire  
3535 First Avenue North  
St. Petersburg, Florida 33713

For the City: James W. Dehhardt, Esquire  
2700 First Avenue North  
St. Petersburg, Florida 33713

For the Department: Christine C. Stretesky, Esquire  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

STATEMENT OF THE ISSUES

The issue for consideration in this case is whether the Department of Environmental Protection should issue a permit to the City of Treasure Island for the construction of a dock next to the boat ramp located near Gulf Boulevard and 123rd Avenue in Pinellas County.

PRELIMINARY MATTERS

On July 10, 1995, Bob Stetler, the Department of Environmental Protection's, (Department's), Southwest District Environmental Advisor issued an Intent to Issue indicating its intention to issue a permit for the proposed project cited above. Shortly thereafter, on July 13, 1995, William K. Byrd, a property owner whose residential property is adjacent to the proposed dock and existing ramp, filed a Petition for Administrative Hearing in opposition to the proposed permit and this hearing followed.

At the hearing, Mr. Byrd testified in his own behalf and presented the testimony of William R. Perkins and Kimberly G. Stanley, both owners of property in the general area of the proposed dock. He also introduced Petitioner's Exhibits 1 through 4. The Department presented the testimony of Mark Edwin Peterson, an Environmental Specialist II with the Department and an expert in the impacts of dredge and fill projects on wetlands and water quality, and introduced Department Exhibit 1 and 2. The City presented the testimony of David Shinamon a planner with the Pinellas County Planning Council and an expert in the field of urban and regional planning; John R. Kapili, Jr., a neighbor of the proposed dock; Charles M. Harding, head of the City Police Department's marine unit and a resident in the area, and Peter G. Lombardi, City Manager and City Clerk for the City of Treasure Island. The City also introduced City Exhibit 1.

A transcript of the hearing proceedings was provided and subsequent to the receipt thereof, counsel for the City and the Department submitted Proposed Findings of Fact which are accepted and, as appropriate incorporated in this Recommended Order. Petitioner's counsel's summation, with legal citations, has been carefully considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. At all times to the issues herein the Department of Environmental Protection was the state agency in Florida responsible for the regulation of water pollution and the issuance of dredge and fill permits in the specified waters of this state.

2. Mr. Byrd has been a resident of the City of Treasure Island, Florida for many years and resides at 123 123rd Avenue in that city. His property is located on Boca Ciega Bay next to a public boat ramp operated by the City.

3. On April 12, 1995, the City of Treasure Island applied to the Department of Environmental Protection for a permit to construct a dock six feet wide by seventy-five feet long, located on the edge of its property on which the public boat ramp is located. This property is located in a basin off Boca Ciega Bay, which is classified as a Class III Outstanding Florida Water. The dock involves the placement of pilings in the water, and the construction of a walkway thereon.

4. In order to be obtain a permit, the applicant must provide the Department with reasonable assurances that the proposed project will not degrade water quality and will be in the public interest. The project is permanent in nature, but the temporary concerns raised by construction have been properly addressed in the permit.

5. In the instant case, the dock is intended to accommodate the boating public which will utilize it to more safely launch, board, debark, and recover small boats at the ramp in issue. The dock will be equipped with a hand rail which will increase the safety of the project. Evidence establishes that without the dock, boaters have to enter the water to launch and recover their boats on a ramp can be slippery and dangerous.

6. The site currently in use as a boat ramp, a part of which will be used for the dock, is almost totally free of any wildlife. No evidence could be seen of any sea grasses or marine life such as oysters, and there was no indication the proposed site is a marine habitat. Manatees do periodically inhabit the

area, and warning signs would be required to require construction be stopped when manatee are in the area.

7. The water depth in the immediate area and the width of the waterway is such that navigation would not be adversely impacted by the dock construction, nor is there any indication that water flow would be impeded. No adverse effect to significant historical or archaeological resources would occur and taken together, it is found that the applicant has provided reasonable assurances that the project is within the public interest.

8. Concerning the issue of water quality, the applicant has proposed the use of turbidity curtains during construction which would provide reasonable assurances that water quality would not be degraded by or during construction. The water depths in the area are such that propeller dredging and turbidity associated therewith should not be a problem. No evidence was presented or, apparently is on file, to indicate any documented water quality violations at the site, and it is unlikely that water quality standards will be violated by the construction and operation of the structure.

9. The best evidence available indicates there would be no significant cumulative impacts from this project. Impacts from presently existing similar projects and projects reasonably expected in the future, do not, when combined with the instant project, raise the possibility of adverse cumulative degradation of water quality or other factors of concern. By the same token, it is found that secondary impacts resulting from the construction of the project would be minimal.

10. It is also found that this project is eligible for an exemption from the requirements to obtain a permit because of the Department's implementation on October 3, 1995 of new rules relating to environmental resources. However, the City has agreed to follow through with the permitting process notwithstanding the exemption and to accept the permit including all included conditions. This affords far more protection to the environment than would be provided if the conditions to the permit, now applicable to this project, were avoided under a reliance on the exemption to which the City is entitled under current rules.

11. To be sure, evidence presented by Mr. Byrd clearly establishes the operation of the existing boat ramp creates noise, fumes, diminished water conditions and an atmosphere which is annoying, discomfiting, and unpleasant to him and to some of his neighbors who experience the same conditions. Many of the people using the facility openly use foul language and demonstrate a total lack of respect for others. Many of these people also show no respect for the property of others by parking on private property and contaminating the surrounding area with trash and other discardables.

12. It may well be that the presently existing conditions so described were not contemplated when the ramp was built some twenty years ago. An increase in population using water craft, and the development and proliferation of alternative watercraft, such as the personal watercraft, (Ski-Doo), as well as an apparent decline in personal relations skills have magnified the noise and the problem of fumes and considerably. It is not likely, however, that these conditions, most of which do not relate to water quality standards and the other pertinent considerations involved here, will be increased or affected in any way by the construction of the dock in issue.

## CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

14. Petitioner has opposed the Department's intent to issue a dredge and fill permit to the City of Treasure Island to construct a dock at the edge of a public boat ramp owned by the City. A permit was required at the time of the application under Rule 62.312.030(1), F.A.C., which provides that anyone intending to dredge and fill in state waters obtain a permit from the Department unless otherwise exempted by statute or rule. As applicant, the City has the burden to demonstrate its entitlement to the permit sought by a preponderance of the evidence. Department of Transportation vs. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981), and Rule 62-103.130(1), F.A.C.

15. The placing of pilings in waters of the state is treated as dredging and filling as defined in Rule 62-312.020(11), F.A.C.

16. Petitioner contends that the fumes, oil slick, and noise incidental to the current operation of the boat ramp will be amplified and exaggerated by the construction of a dock at the already existing ramp. He contends this will be in violation of the legislative policy found in Section 403.021, Florida Statutes, to prevent injury to plant and animal life and property and to foster the comfort and convenience of the people by protecting them from the dangers inherent in the release of toxic or otherwise hazardous vapors, gases, or highly volatile liquids into the environment. He asserts, as well, that it is the responsibility of the state to control, regulate and abate activities which are causing or may cause pollution and which unreasonably interfere with the comfortable enjoyment of life or property.

17. Consistent therewith, and under the provision of Rule 62-312.080(1), F.A.C. the Department cannot issue a dredge and fill permit unless the applicant provides reasonable assurances, based on its plans, test results and other evidence, that the proposed project will not violate water quality standards. Here, the evidence presented by the City and the Department demonstrates that the proposed project will not do so. As noted previously, the factors of which Mr. Byrd complains currently are the result of the existing boat ramp and the method in which it is being operated and controlled by the City. These factors are not within the parameters of the pertinent statute.

18. In addition, under the provisions of Section 373.414(1), Florida Statutes, the Department cannot issue a permit for a project in or over Outstanding Florida Waters unless the applicant provides reasonable assurance that the project is clearly in the public interest. Under the circumstances, notwithstanding the objectionable personal ramifications of the project, the construction to be permitted is clearly in the public interest. It will be open to and used by the public as a recreational opportunity. Again, it cannot reasonably be said that construction of a dock at an existing boat ramp to enhance safety is not in the public interest.

19. Finally, the City has shown that its proposed project, along with similar existing, pending or expected projects, will not have an adverse cumulative impact on water quality. Conformance with the conditions imposed as a condition to the issuance of the permit will result in far less immediate and cumulative impact than might be expected were the City to proceed with the

construction under the exemption to which it is entitled under current rule changes. Any cumulative impact resulting from the construction under the permit will be negligible.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is, therefore:

RECOMMENDED that the Department of Environmental Protection issue to the city the requested permit to construct the dock in issue at the existing public boat ramp at the east end of 123rd Avenue right of way in the City of Treasure Island.

RECOMMENDED this 12th day of December, 1995, in Tallahassee, Florida.

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ARNOLD H. POLLOCK  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of December, 1995.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency which will issue the Final Order in this case concerning its rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency which will issue the Final Order in this case.