

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BERMUDA TERRACE & PINETREE )  
DRIVE CONCERNED CITIZENS, )  
 )  
Petitioner, )

vs. )

Case No. 97-0755

PALM BEACH COUNTY HEALTH )  
DEPARTMENT and LOXAHATCHEE )  
RIVER ENVIRONMENTAL CONTROL )  
DISTRICT, )  
 )  
Respondents. )

---

VILLAGE OF TEQUESTA, )  
 )  
Petitioner, )

vs. )

Case No. 97-0857

PALM BEACH COUNTY HEALTH )  
DEPARTMENT and LOXAHATCHEE )  
RIVER ENVIRONMENTAL CONTROL )  
DISTRICT, )  
 )  
Respondents. )

---

VILLAGE OF TEQUESTA, )  
 )  
Petitioner, )

vs. )

Case No. 97-2000

PALM BEACH COUNTY HEALTH )  
DEPARTMENT and LOXAHATCHEE )  
RIVER ENVIRONMENTAL CONTROL )  
DISTRICT, )  
 )  
Respondents. )

---

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 21, 1998, at West Palm Beach, Florida, before Susan B. Kirkland, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

|   |   |
|---|---|
| For Petitioners:  | Scott Hawkins, Esquire<br>Jones, Foster, Johnston &<br>Stubbs, P.A.<br>505 South Flagler Drive, Suite 1100<br>West Palm Beach, Florida 33401                            |
| For Respondent Palm<br>Beach County Health<br>Department:                 | Victoria Coleman, Esquire<br>Palm Beach County Health Department<br>826 Evernia Street<br>West Palm Beach, Florida 33401  |
| For Respondent<br>Loxahatchee River<br>Environmental Control<br>District: | Timothy Gaskill, Esquire<br>Curtis L. Shenkman, Esquire<br>De Santis, Gaskill, Smith &<br>& Shenkman, P.A.<br>11891 U.S. Highway One<br>North Palm Beach, Florida 33408 |

STATEMENT OF THE ISSUES

Whether the Loxahatchee River Environmental Control District's applications for construction of wastewater collection and transmission systems, specifically, Permit Numbers CS50-298013, CS50-301197, and CS50-305990, should be granted by the Palm Beach County Health Department.

PRELIMINARY STATEMENT

On December 17, 1996, Respondent, Palm Beach County Health Department (Health Department), issued Permit No. CS50-298013 to Respondent, Loxahatchee River Environmental Control District

(ENCON) for construction of sewers in Bermuda Terrace and Pinetree Drive, immediately adjacent to the Village of Tequesta (Tequesta). Bermuda Terrace and Pinetree Concerned Citizens (Concerned Citizens) and the Village of Tequesta filed petitions on December 30, 1996, challenging the proposed permit.

On March 27, 1997, the Health Department issued a Notice of Intent to Issue Permit No. CS50-305990 to ENCON for the construction of sewers in Country Club Point and Anchorage Point, located in the Village of Tequesta. On April 9, 1997, Tequesta filed a petition challenging the notice of intent to issue.

On June 24, 1997, the Health Department issued a Notice of Intent to Issue Permit No. CS50-305990 for the construction of sewers in Tequesta Country Club. On July 7, 1998, Tequesta filed a petition challenging the notice of intent to issue.

The cases were referred to the Division of Administrative Hearings for assignment to an administrative law judge. On February 25 and March 10, 1997, motions to dismiss were filed by Respondents, but were denied by Order dated April 16, 1997. The Order clarified the issues of the hearing as follows: "Whether the particular system proposed by ENCON should be permitted, not whether ENCON's decision to replace septic tanks with a sewer system was a sound decision or whether ENCON followed its own rules in deciding whether to install the sewer system." By order issued June 3, 1997, the cases were consolidated for final hearing.

On June 23, 1997, Circuit Court Judge Moses Baker granted Petitioners' Motion to Stay Final Hearing, and on July 22, 1997, the undersigned Administrative Law Judge granted an Order to Stay the Final Hearing, which had been scheduled for July 28-31, 1997. On or about October 22, 1997, the stay was lifted by the Circuit Court of Palm Beach County, and on December 18, 1997, a Notice of Hearing was issued scheduling the final hearing for January 21, 1998.

At the final hearing, the Health Department called Robert Mitchell and Umesh Asrani as its witnesses. Health Department's Exhibits 1-3 were admitted in evidence. ENCON did not call any witnesses and did not submit any exhibits. Petitioners called the following witnesses: William Reece, James Macon, Thomas Bradford, Vince Amy, John Dreith, Thomas Little, Terrance Bengtsson and Michael Walters. Petitioners' Exhibits 1-4 and 7 were admitted in evidence. Petitioner proffered two exhibits.

At the final hearing, the parties agreed to file Proposed Recommended Orders within 20 days of the filing of the transcript. The transcript was filed on February 26, 1998. Respondent ENCON filed its proposed recommended order on March 16, 1998. The Health Department did not file a proposed recommended order. Petitioners filed their Proposed Recommended Order on March 18, 1998.

#### FINDINGS OF FACT

1. Respondent, Palm Beach County Health Department (Health

Department) was delegated the authority by the Department of Environmental Protection to review applications and issue permits for wastewater collection and transmission systems pursuant to the Specific Operating Agreement for Delegation of Wastewater Program Authority From the Florida Department of Environmental Protection. The argument specifically referenced Chapter 403, Florida Statutes, and the successor to Title 17, Florida Administrative Code, which is Title 62.

2. Respondent, Loxahatchee River Environmental Control District (ENCON), is a water control district.

3. Petitioner, Village of Tequesta (Tequesta), is a municipal corporation.

4. Petitioner Bermuda Terrace & Pinetree Drive Concerned Citizens (Concerned Citizens) is a coalition of homeowners of record owning property in Bermuda Terrace and on Pinetree Drive.

5. On December 17, 1996, the Health Department issued Permit No. CS50-298013 to ENCON for installation of sewers in Bermuda Terrace and Pinetree Drive.

6. On March 27, 1997, the Health Department issued a Notice of Intent to Issue Permit No. CS50-301197 to ENCON for the construction of sewers in Country Club Point and Anchorage Point.

7. On June 24, 1997, the Health Department issued a Notice of Intent to Issue Permit No. CS50-305990 to ENCON for the construction of sewers in Tequesta Country Club.

8. Currently the wastewater in the areas for which the

sewers are proposed to be installed flows into septic tank systems. There are 835 homes on the Tequesta Peninsula that would be hooking up to the proposed sewer system.

9. The Health Department created a review form for internal use in reviewing applications for sewage collection permits. The Sewage Collection Checklist contains the statutory and administrative rule requirements for permitting sewage collection and transmission systems. The applications submitted by ENCON were reviewed using the review form. All three applications met the criteria contained in the applicable statutes and rules.

11. Robert Mitchell, who supervises the permitting for wastewater collection systems for the Health Department, opined that the permit applications provided reasonable assurances that the construction and operation of the sewage system would not discharge, emit, or cause pollution. A sewage collection system does not emit or discharge pollution and, if constructed and functioning according to the technical requirements of the administrative rules, does not cause pollution. Thus, the applications compliance with the technical compliance with Rules 62-604.400 and 62-604.300, Florida Administrative Code, is reasonable assurance that the proposed systems will not cause pollution.

12 The proposed permits contain the following specific condition:

Prior to construction, all required permits or approvals must be obtained for all

aspects of the project from the appropriate agencies.

13. Any dewatering required by the construction of the wastewater collection/transmission system will have to meet the permitting criteria for that particular activity, which comes under the jurisdiction of the South Florida Water Management District and not the Health Department.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57(1), Florida Statutes.

15. Review and issuance of wastewater collection and transmission systems is governed by Section 403.007, Florida Statutes and Chapter 62-604, Florida Administrative Code.

16. Rule 62-604.100(7), Florida Administrative Code provides:

The purpose of Chapter 62-604, F.A.C., is to provide minimum design and operation and maintenance standards for domestic wastewater collection/transmission systems. Systems shall be designed in accordance with sound engineering practice. Supported by moderating provisions, it is intended that Chapter 62-604, F.A.C., establish a framework whereby design flexibility and sound engineering practice can be used in developing systems with which to collect and transport domestic wastewater in an environmentally sound manner.

17. Rule 62-604.300, Florida Administrative Code, sets forth the general technical criteria and standards for

construction of collection and transmission systems contained in standard manuals and publications which are incorporated by reference.

18. Rule 62-604.400, Florida Administrative Code, contains the design/performance consideration for the review of applications for permits for collection and transmission systems.

19. Rule 62.604.300(7), Florida Administrative Code, states: "Permitting requirements and fees related to permitting are listed in Chapter 62-4, F.A.C."

20. Rule 62-4.070(1), Florida Administrative Code, states:

(1) A permit shall be issued to the applicant upon such conditions as the Department may direct, only if the applicant affirmatively provides the Department with reasonable assurance based on plans, test results, installation of pollution control equipment, or other information that the construction, expansion, modification, operation, or activity of the installation will not discharge, emit, or cause pollution in contravention of Department standards or rules. However, for discharges of wastes to water, the Department may issue temporary operation permits under the criteria set forth in Section 403.088(3), F.S.

21. ENCON's three applications met the technical standards in Rules 62-604.300 and 62-604.400, Florida Administrative Code. ENCON has provided reasonable assurance that the proposed wastewater collection and transmission systems will not emit, discharge or cause pollution.

22. Petitioners argue that the construction of the systems will require dewatering and ENCON has not explained what it will



do with the water, such as treating the water prior to discharge or tankering the water off site. Dewatering would come under the jurisdiction of the South Florida Water Management District and any permit for dewatering activities would be issued by the South Florida Water Management District. If a permit is necessary for dewatering, a specific condition of the permits at issue requires ENCON to get all necessary permits prior to construction, including a permit for dewatering.

23. Petitioners do not argue that the plans for the wastewater collection and transmission systems do not meet the technical requirements of Rules 62-604.300 and 62-604.400, Florida Administrative Code. They argue that homeowners who are currently using septic tank systems will be required to connect to the sewer system and discontinue use of the septic tanks, which will result in reduced recharge to the aquifer and an imbalance in the saltwater/freshwater interface causing saltwater intrusion to water supply wells. Petitioners cite Save the Manatee, Inc. & Friends of the Greenway v. Citrus Recreational Marina, Inc., & Florida Department of Environmental Protection, DOAH Case No. 96-1723, (DEP, February 5, 1997); Florida Power v. DER, 605 So. 2d 149 (Fla. 1st DCA 1992); and The Conservancy, Inc., v. A. Vernon Allen Builder, 580 So. 2d 772 (Fla. 1st DCA 1991) for the proposition that the Health Department should consider whether the discontinuance of the use of septic tanks will cause salt water intrusion to the water supply wells. The

cases cited deal with dredge and fill permits and not permits issued pursuant to Section 403.007, Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered granting Permit Nos. CS50-301197, CS50-305990, and CS50-298013 to ENCON for construction of sewer systems.

DONE AND ENTERED this 17th day of April, 1998, in Tallahassee, Leon County, Florida.

---

SUSAN B. KIRKLAND  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847

Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of April, 1998.

COPIES FURNISHED:

Dr. James Howell, Secretary  
Department of Health  
1317 Winewood Boulevard  
Building 6, Room 306  
Tallahassee, Florida 32399-0700

Angela T. Hall, Agency Clerk  
Department of Health  
1317 Winewood Boulevard  
Building 6, Room 306  
Tallahassee, Florida 32399-0700

Victoria Coleman, Esquire  
District 9 Legal Office  
Department of Health  
Post Office Box 29  
West Palm Beach, Florida 33402

Scott G. Hawkins, Esquire  
Jones, Foster, Johnston & Stubbs, P.A.  
505 South Flagler Drive  
Post Office Box 3475  
West Palm Beach, Florida 33402-3475

Timothy W. Gaskill, Esquire  
Curtis L. Shenkman, Esquire  
DeSantis, Gaskill, Smith & Shenkman, P.A.  
11891 U.S. Highway One  
North Palm Beach, Florida 33408

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.