

March 2, 2001

Kathy C. Carter, Agency Clerk  
Office of the General Counsel  
Department of Environmental protection  
3900 Commonwealth Boulevard  
Mail Station 35  
Tallahassee, Florida 32399-3000

Re: MARINA SUITES ASSOCIATION, INC. vs. SARASOTA BY HOTEL,  
INC. AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
DOAH Case No. 00-2522

Dear Ms. Carter:

Enclosed are changes to the Recommended Order, dated February 12, 2001, in the referenced case. The changes have been made in paragraph two of the Preliminary Statement (page 3), paragraph numbered 18 of the Findings of Fact (page 12), and paragraph numbered 31 of the Conclusions of Law (page 18).

Sincerely,

**S**

ARNOLD H. POLLOCK  
Administrative Law Judge

AHP/gl

Enclosures

Cc: Teri L. Donaldson, General Counsel  
Craig D. Varn, Esquire  
Mark A. Hanson, Esquire  
Barbara B. Levin, Esquire

of the Hyatt Hotel located adjacent to the marina in question; Kristina V. Tignor, an engineer and vice-president of the Tignor Group, an engineering and permitting consulting firm; Charles E. Githler, President of SBH, the general partner of Hotel Associates and owner of the property in question; and by deposition, Mary Duncan, an environmental specialist III with the Florida Fish and Wildlife Conservation Commission and an expert in permit review for impacts to manatees and their habitat. SBH also introduced SBH Exhibits 1 through 16. Petitioner presented the testimony of Gary Stephen Comp, general manager of natural resources for Sarasota County; Joseph F. Hyland, Jack L. Neely, Philip M. Dasher, Granville H. Crabtree, Jr., and Hannelor Rimlinger, all residents of Marina Suites, Petitioners herein; Steven C. Sauers, an environmental management consultant in private practice; and by deposition, Patricia Thompson, a staff biologist with Save the Manatee Club. Petitioner further presented the testimony of Randall Armstrong, partner in the Phoenix Environmental Group, consultants on the preparation and filing of dredge and fill permits. Petitioner also introduced Petitioner's Exhibits A through J, L through N, and P through X. Petitioner's Exhibits K and Y were offered but were rejected.

A Transcript of the proceedings was filed on December 11, 2000. Subsequent to receipt of the transcript counsel for Respondents joined in submitting a Joint Proposed Recommended replacement with concrete piling and decking and the

installation of storm water treatment apparatus, would reduce the adverse impacts to water quality within the basin and, in fact, improve it. It is so found.

18. An issue is raised in the evidence as to the actual number of boats which can effectively use the marina at any one time. SBH contends the present configuration calls for between twenty to thirty boats. Evidence also shows that at times, during boat shows for example, many more boats are accommodated therein through "rafting." Even if the facility is expanded by the most significant number of slips, there is no concrete evidence there would be a significantly increased usage. The current usage is normally well below capacity. Modifications proposed under the pending permit could add as many as ten to fifteen additional slips. The Department has considered it significant that SBH has agreed to limit the number of boats that can be docked in this marina, even after modification, but it cannot be shown exactly how much long-term water quality benefit can be expected. Nonetheless, it is a reasonable conclusion to draw, as the Department has done, that if the number of boats is limited to a figure at or even slightly higher than that which is currently experienced, a long-term benefit can be expected with the implementation of the other approaches, and any secondary impacts resulting from the accomplishment of the project would be minimal.

## CONCLUSIONS OF LAW

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

31. The Petitioner has challenged the Department's proposed intent to issue a permit to SBH to modify and expand the existing marina adjacent to its hotel facility on the edge of Sarasota Bay. The existing marina was constructed without permit, but was subsequently permitted, and the proposed modifications must also be permitted pursuant to Sections 373.413, 373.414, and 373.416, Florida Statutes, and Chapter 40D-4.301, Florida Administrative Code. As applicant, SBH carries the burden of proving by a preponderance of the evidence its entitlement to the permit sought by providing reasonable assurances that the project will not cause pollution that would violate applicable statutes or rules. Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

32. The evidence of record indicates that the current water quality at the site of the proposed project is in violation of standards required for both copper and dissolved oxygen. Therefore, under the provisions of Section 373.414, Florida Statutes, the Department cannot issue a permit of the kind sought here unless the applicant provides reasonable assurances, through