

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

HELEN J. CRENSHAW, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 12-3280  
 )  
 VISTA OF FORT WALTON BEACH, )  
 LLC, AND NORTHWEST FLORIDA )  
 WATER MANAGEMENT DISTRICT, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the  
Division of Administrative Hearings by its assigned  
Administrative Law Judge, D. R. Alexander, on January 22, 2013,  
in DeFuniak Springs, Florida.

APPEARANCES

For Petitioner: Timothy Crenshaw, Qualified Representative  
61 North 18th Street  
DeFuniak Springs, Florida 32433-9547

For Respondent: Kevin X. Crowley, Esquire  
(District) Pennington, Moore, Wilkinson,  
Bell & Dunlop, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

For Respondent: Jim Busby, Managing Member  
(Vista) Vista of Fort Walton Beach, LLC  
Post Office Box 760  
Fort Walton Beach, Florida 32549-0760

STATEMENT OF THE ISSUE

The issue is whether Vista of Fort Walton Beach, LLC (Vista), should be issued Surface Water Management Permit No. 04-2012-0013G authorizing the construction of an earthen embankment dam and impoundment to impound stormwater runoff from a proposed commercial development in the City of DeFuniak Springs (City), Walton County, Florida.

PRELIMINARY STATEMENT

On August 8, 2012, the Northwest Florida Water Management District (District) gave notice of its intent to issue a surface water management permit to Vista. After her first request for a hearing was dismissed, without prejudice, Petitioner, Helen J. Crenshaw, who resides and owns property adjacent to the proposed project, filed her Amended Petition. The matter was then referred by the District to DOAH. On the undersigned's own motion, the Amended Petition was dismissed, without prejudice, and Petitioner filed a [Second] Amended Petition. The District's Motion to Dismiss that pleading was denied.

At the final hearing, Petitioner, who was represented by her son, Timothy Crenshaw, testified on her own behalf and presented the testimony of Kermit H. George. Also, Petitioner's late-filed Exhibit 1 was received in evidence. The District and Vista jointly presented the testimony of Kermit H. George, a professional engineer and land surveyor with Southern

Engineering Group, LLC, and accepted as an expert; and Lance Laird, a professional engineer and Chief of the District's Bureau of Surface Water Regulation and accepted as an expert. Also, Joint Exhibits 1-10 were received in evidence. Finally, the undersigned granted the District's request to take official recognition of section 373.429, Florida Statutes, Florida Administrative Code Chapter 40A-4, and rule 40A-1.205.

The Transcript of the hearing was filed on February 4, 2013. Proposed Findings of Fact and Conclusions of Law were timely filed by Petitioner and jointly by the District and Vista, and they have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The District has regulatory jurisdiction over the construction of certain types of impoundments within its boundaries. If an impoundment is at least ten feet high but less than 25 feet in height and has an impounding capacity of at least 50 acre-feet, a general permit is required. See Fla. Admin. Code R. 40A-4.041(1).

2. Vista, a limited liability corporation, owns an odd-shaped parcel in the City on which it intends to build a small commercial development consisting of a 17,000-square foot building, a parking lot, and related amenities. The vacant parcel abuts the north side of U.S. Highway 90 just east of

18th Street and is approximately 1.66 acres in size. The property is partially wooded and has a small wetland area on its northeastern corner.

3. In conjunction with the proposed commercial development, Vista intends to construct an impoundment to control stormwater runoff from the project. Because the impoundment will be ten feet high and have an impounding capacity of at least 50 acre-feet, Vista is required to obtain a general permit. See Fla. Admin. Code R. 40A-4.041(1). Vista filed a permit application with the District on June 8, 2012.

4. On August 8, 2012, the District gave notice that it intended to issue a surface water management permit to Vista. The permit allows the construction of a stormwater retention basin. A mitigation plan for impacts to 0.23 acres of wetlands was also approved but is not at issue in this proceeding.

5. As described in the District staff report, the project will encompass one earthen embankment dam and impoundment to impound the storm runoff. It will operate as a dry stormwater retention basin designed to impound water only during rainfall events. The facility will utilize a pipe and riser spillway system, and the basin outfall will be protected by a rip-rap lined plunge pool. Due to space restrictions, an engineered retaining wall will be incorporated into the embankment's north side slope. The stormwater will discharge through controlled

overflow structures into a nearby wetland area that lies northeast of Vista's property and will then be integrated into an existing channel that eventually forms the headwaters of Sandy Creek to the north.

6. Petitioner has resided on her property since around 1932. Her odd-shaped parcel, described as being between five and seven acres in size, lies immediately to the north of Vista's property. A small wetland is located on the southeastern corner of her property. The two parcels share a common boundary line, appearing to be no more than a hundred feet or so. Because the boundary line is lower than the highest part of each owner's property, a "trench" has formed along the line. Wabash Avenue, a platted but un-built roadway that begins on U.S. Highway 90, runs to the northwest through the wetland area and along the eastern boundaries of both properties. As alleged in the Second Amended Petition, Petitioner is concerned that the project will cause flooding on her property. In a broader sense, she appears to be opposed to any commercial development on Vista's property.

7. The back side of the Vista parcel slopes downhill to a recessed area that is adjacent to both properties. Although some fill has already been placed on the property in preparation for the development, the applicant intends to add "a lot" more fill to the entire parcel to create a gradual slope down to the

edge of Wabash Avenue. A basin or pond around 0.20 acres in size will be formed within the fill area and a retaining wall consisting of multiple segments will be constructed around the basin. The wall will be separated from Petitioner's property by a 20-foot buffer, while at its closest point the basin will be "35 feet or so" from her property line. The plans submitted by the applicant demonstrate that the system will be built in accordance with all District standards and should operate in a safe manner. Before construction can begin, the District must approve the retaining wall design specifications.

8. During rain events, the first inch of water will be retained on site for treatment. Additional water will be stored in the basin and then slowly allowed to discharge from the basin into the wetlands. The point of discharge from the basin is at a location a minimum of 20 feet south and east of Petitioner's property line.

9. To ensure that the retention system will not discharge runoff at a higher rate than was discharged before development, Vista performed hydrologic calculations demonstrating pre- and post-development runoff. According to accepted models developed by the United States Department of Agriculture and its predecessor, the Soil Conservation Service, the current peak runoff from the Vista property is 2.46 cubic feet per second (CFS) during a two-year, 24-hour storm event. After

development, the volume of water will be reduced to 0.74 CFS. During a 25-year, 24-hour storm event, the volume of runoff post-development is anticipated to drop from 12.59 CFS to 6.51 CFS. Finally, during a 100-year, 24-hour storm event, post-development runoff will be slightly reduced from 19.64 CFS to 18.99 CFS. Therefore, as sited, sized, and designed, the project will reduce runoff during all anticipated storm events.

10. The foregoing calculations were not credibly contradicted and satisfy the requirement that an applicant give reasonable assurance that the project will not cause an increased flow such that it will endanger downstream property in times of flood with respect to state or frequency. See Fla. Admin. Code R. 40A-4.301(2)(f). They also confirm that water in the impoundment will not be raised to a level that could be harmful to the property of others. See Fla. Admin. Code R. 40A-4.301(2)(c). Thus, the potential for flooding on Petitioner's property will be reduced if the project is constructed as permitted.

11. The Department of Transportation (DOT) is currently repairing the drainage system on U.S. Highway 90 in front of the Vista property. Stormwater from that project drains into the wetlands through an easement deeded to the City at the rear of the Vista property. Petitioner pointed out that after the DOT project began, and fill was added to the Vista property, she has

experienced an increase in water on her property. Whether the DOT project is responsible in any way for this hydrologic change is not known. However, accepted testimony by two professional engineers supports a finding that Vista is not responsible for any hydrologic changes on Petitioner's property. Vista was not required to take into account any runoff from the DOT project in making its hydrologic calculations because the amount of runoff from its own property will actually be reduced by the retention system.

12. At hearing, Petitioner contended that a fence she built on the common boundary line with Vista sometime after 1990 was illegally removed by Vista in order to construct the basin. According to Mr. George, who first surveyed the property line in 1990 and then surveyed it a second time a few years ago, the fence was built a few feet beyond Petitioner's property line and lies within the buffer zone between the basin and her property. Petitioner argues that even if this is true, the doctrine of adverse possession applies and she is now the owner of the property on which the fence was built. This type of dispute, however, can only be resolved in circuit court, and not in an administrative forum. See § 26.012(2)(g), Fla. Stat. The District has examined the property records and is satisfied that Vista has ownership of the property on which the impoundment will be built. Notably, the basin will not be located within



the 20-foot buffer where the fence once stood and which is dedicated to the City as an easement.

13. Finally, through cross-examination at hearing, Petitioner suggested that any project designed by humans carries with it the remote possibility that it will fail and create a catastrophic situation on her property. In the unlikely event that the design and operation of the retention basin threaten the safety of adjoining property owners, section 373.429 and rule 40A-1.205 enable the District to revoke, suspend, or modify a permit to protect the safety of others.

#### CONCLUSIONS OF LAW

14. Section 120.569(2)(p) places the ultimate burden of persuasion on the challenger in cases where the agency intends to issue a permit. Therefore, once the prima facie case of the applicant and the District's evidence are presented, Petitioner has the ultimate burden of persuasion to prove that the applicant is not entitled to a permit.

15. In order for a permit to issue, an applicant must give reasonable assurances that the proposed activity will satisfy all relevant statutory and rule criteria. Although it lacks clarity, the Second Amended Petition implicates only two criteria in rule 40A-4.301(2). All other rule and statutory requirements have been satisfied. The criteria in dispute

provide in relevant part that the issuance of a permit for an impoundment will be denied if the proposed activity:

(c) Will cause the level of the surface water in any . . . impoundment to be . . . raised to a level that will be harmful to the people, property, or water resources of this area;

(f) Will cause an increased flow such that it will endanger downstream property in times of flood with respect to state or frequency;

16. As to these disputed criteria, Vista has established by a preponderance of the evidence that the proposed impoundment will not cause an increased flow that will endanger downstream property or raise the water to a level that will be harmful to the property of others. Because all other statutory and rule requirements have also been satisfied, the permit should be issued.

#### RECOMMENDATION

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

RECOMMENDED that the Northwest Florida Water Management District enter a final order approving the issuance of Surface Water Management System Permit No. 04-2012-0013G to Vista.

DONE AND ENTERED this 11th day of March, 2013, in  
Tallahassee, Leon County, Florida.

*D. R. Alexander*

---

D. R. ALEXANDER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of March, 2013.

COPIES FURNISHED:

Jonathon Steverson, Executive Director  
Northwest Florida Water Management District  
152 Water Management Drive  
Havana, Florida 32333-4712

Helen J. Crenshaw  
61 North 18th Street  
DeFuniak Springs, Florida 32433-9547

Kevin X. Crowley, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

James Busby  
Vista of Fort Walton Beach, LLC  
Post Office Box 760  
Fort Walton Beach, Florida 32549-0760

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.