

**BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

**In re: Riverside Golf Course Community, L.L.C.,
Request for Variance.**

Case No. 21-EPC-009

FINAL ORDER DENYING REQUEST FOR VARIANCE

On July 15, 2021, Riverside Golf Course Community, L.L.C., (hereinafter “Applicant”) submitted a variance request to the Environmental Protection Commission of Hillsborough County (EPC) under section 1-2.50, Rules of the EPC. The applicant requested a variance from Section 1-10.04(4), Rules of the EPC regarding noise regulations specific to landscaping.

BACKGROUND and APPLICABLE REGULATORY CRITERIA

1. Applicant Riverside Golf Course Community, L.L.C. is a limited liability company that owns and operates a golf course on Pier Drive in Ruskin, Florida (Facility).
2. Applicant filed a request on July 15, 2021, with the EPC Executive Director asking that the EPC Commission grant a variance to allow their Facility to be exempt from EPC noise regulations specific to landscaping beginning at 5 a.m. every day, as opposed to current law (7 a.m.) found in Chapter 1-10, Rules of the EPC (Noise Pollution Rule).
3. The EPC Executive Director through a designee requested additional information (RAI) on August 27, 2021. Applicant supplemented the application with responses to the RAI on September 17, 2021.
4. Applicant requested a variance to the noise regulation exemption section asserting the EPC’s noise regulation prior to 7 a.m. is a substantial economic hardship and a violation of the principles of fairness as applied to their Facility.
5. On November 5, 2021, Applicant published a notice of a variance public hearing in the Business Observer.
6. On November 18, 2021, the EPC Commission conducted a public hearing. The Applicant’s representatives, the EPC Executive Director’s representatives, and one citizen presented information for consideration by the Commission. The Commission also considered the EPC agenda item backup material (e.g. – application, RAI, RAI response, and EPC staff summary) which is incorporated by reference into this Order.
7. The purpose of Chapter 1-10, Rules of the EPC is to protect humans from noise pollution. The Applicant requested a variance from Section 1-10.04(4), Rules of the EPC. This

section exempts from EPC regulation commercial landscaping related noises from 7 a.m. to 10 p.m. The Applicant's request would expand that regulatory exemption time two hours earlier than other commercial operators. The noise rule under consideration states as follows:

1-10.04 EXEMPTIONS

Any of the following exempt activities or sources listed in this section remain subject to any other laws, regulations, codes or ordinances. The following activities or sources are exempt from the requirements of this rule and the EPC's noise nuisance laws:

*(4) Except as conditioned below, reasonable operation of equipment or conduct of activities related to residential or agricultural communities, including but not limited to, lawn care and refuse collection. **Commercial operation of motorized lawn, garden, or other outdoor maintenance equipment is exempt between the hours of 7 a.m. and 10 p.m.** (emphasis added)*

8. The variance request is not regarding a rule provision which originates from the Florida Department of Environmental Protection (DEP) or the Southwest Florida Water Management District.

9. This variance is requested pursuant to section 1-2.50, Rules of the EPC, which states as follows:

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to the EPC Act, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County at least 10 calendar days prior to the public hearing, and such notice shall include a summary of the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

10. The Applicant failed to demonstrate with competent substantial evidence that the Noise Pollution Rule imposes a substantial economic hardship on the Applicant.

11. The Applicant failed to demonstrate with competent substantial evidence how violations of the principles of fairness would occur. Specifically, a failure to demonstrate how

the Noise Pollution Rule affects them in a manner significantly different from the way it affects other similarly situated persons (i.e., other golf courses).

12. The Noise Pollution Rule does not prohibit the Applicant from landscaping prior to 7 a.m. daily. The Applicant noted in their application that they landscape prior to 7 a.m.

13. The Applicant failed to adequately demonstrate “the reasons why and the manner by which the purposes of the underlying rule would still be met” and “the purpose of the underlying rule can be, or has been, achieved by other means” if the variance were granted.

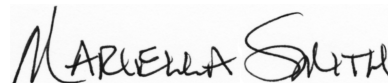
ORDER

For the foregoing reasons, the request for variance from Section 1-10.04(4), Rules of the EPC, is **DENIED**.

NOTICE OF RIGHTS

The EPC's action on this variance request is final on the date executed by the EPC Chair unless a timely appeal via writ of *certiorari* to the 13th Judicial Circuit is filed with any appropriate fee. A copy of the appeal must be provided to the EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619.

DONE AND ORDERED this 3 of December, 2021 in Tampa, Florida.



Mariella Smith, Chair
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