

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

**DANIEL A. JOZSI and CELINA JOZSI,
husband and wife**

Appellants,

vs.

EPC CASE NO. LEPC06-031

**JAMES WINTERROTH and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Respondents.

FINAL ORDER

On May 31, 2007, Hearing Officer Vanessa Cohn, Esq., appointed by the Environmental Protection Commission of Hillsborough County (EPC), submitted to the EPC, and all other parties to this matter, a Recommended Order, a copy of which is attached hereto as Exhibit 1. On June 11, 2007, the Appellants, Daniel and Celina Jozsi, filed Exceptions to the Recommended Order and on June 20, 2007, Respondents James Winterroth and EPC filed a joint Response to the Exceptions.

BACKGROUND

1. On October 17, 2006, the Appellants filed an appeal of an Amended Consent Order between the EPC and Respondent Winterroth dated September 27, 2006, pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act) and Rule 1-2.30, Rules of the EPC.

2. An administrative hearing was held on April 2, 3, and 6, 2007 before the Hearing Officer.

3. The Hearing Officer submitted a Recommended Order on May 31, 2007, wherein the Hearing Officer recommended dismissing the Appellants appeal based on lack of standing to challenge the Amended Consent Order.

4. In accordance with section 1-2.35, Rules of the EPC, a final order hearing was held before the Environmental Protection Commission on September 20, 2007, wherein oral argument was presented by all parties.

5. Having considered the Recommended Order entered by the Hearing Officer, the exceptions filed by the Appellants, the responses to the exceptions filed by the Respondents, the oral argument presented by all the parties, and being otherwise fully advised on the premises:


IT IS ORDERED that

6. The Hearing Officer's Recommended Order dated May 31, 2007, is adopted *in toto*. Furthermore, the Appellants' exceptions are hereby rejected.

7. The courts have clearly ruled that to obtain standing to challenge an agency action or decision an appellant must show (1) that the appellant will suffer injury in fact which is of sufficient immediacy to entitle the appellant to a hearing under the appropriate law, and (2) that the injury is of a type or nature which the proceeding is designed to protect. Friends of Matanzas v. Department of Environmental Protection, 729 So.2d 437 (Fla. 5th DCA 1999) and Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). The Hearing Officer properly held in Recommended Order Conclusion of Law paragraph #7 that other issues did not need to be ruled on as the Appellants failed to provide competent, substantial evidence to satisfy the standing test. The court in Agrico concluded that "since the issue of standing is dispositive of this appeal, we do not address Agrico's remaining arguments." Agrico,

406 So.2d at 483. In issuing the Recommended Order, the Hearing Officer properly followed the approach of the Second District Court of Appeal in Agrico by only ruling on the Appellants' lack of standing.

DONE and ORDERED this 1 day of Oct, 2007.

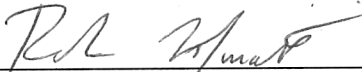

Brian Blair, Chairman
Environmental Protection Commission
of Hillsborough County

NOTICE OF RIGHTS

Any party to this order has the right to seek judicial review of this order in accordance with Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, and the Administrative Procedure Act, Chapter 120, part II, Florida Statutes, 1961 by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure, with the clerk of the Environmental Protection Commission, EPC Legal Department, 3629 Queen Palm Dr., Tampa, FL 33619, and by filing a notice of appeal accompanied by the applicable filing fee with the Second District Court of Appeal within 30 days from the date of the final administrative decision becoming an order of the Commission.

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was sent via hand delivery to **Andrew Zodrow, Esq.**, 3629 Queen Palm Dr., Tampa, Florida 33619 and via U.S. Mail to **Marsha G. Rydberg, Esq.**, The Rydberg Law Firm, P.A., One Tampa City Center, 201 N. Franklin St., Suite 1625, Tampa, FL 33602 and via U.S. Mail to **Margaret M. Craig, Esq.**, 500 E. Kennedy Blvd., Suite 200, Tampa, Florida 33602, on this 2nd day of October 2007.



Ricardo Muratti
Assistant Counsel

Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Dr.
Tampa, Florida 33619
(813) 627-2600
Facsimile (813) 627-2602

**BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

**DANIEL A. JOZSI and CELINA JOZSI,
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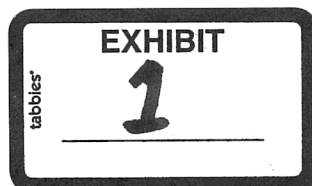
ORDER
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon due notice, on April 2, 3, and 6, 2007, a final hearing in the above-captioned matter was held in Tampa, Florida, by Vanessa Cohn, Esq., assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (EPC), on the Appellants Daniel A. Jozsi and Celina Jozsis' (Appellants) Notice of Appeal and Objection to Amended Consent Order between the EPC and James Winterroth.

APPEARANCES

For Appellants:

Marsha G. Rydberg, Esquire
Wilson D. Ayala, III, Esquire
The Rydberg Law Firm, P.A.
One Tampa City Center
201 N. Franklin Street, Suite 1625
Tampa, FL 33602



For EPC: T. Andrew Zodrow, Esquire
Environmental Protection Commission of Hillsborough
County
3629 Queen Palm Dr.
Tampa, FL 33619

For James Winterroth: Margaret M. Craig, Esquire
Brickleyer Smolker & Bolves, P.A.
500 E. Kennedy Blvd., Suite 200
Tampa, Florida 33602

STATEMENT OF THE ISSUE

Initially, the issues in this matter are whether the Appellants have standing pursuant to the EPC enabling act Chapter 84-446, Laws of Florida, as amended (EPC Act), to administratively challenge the Amended Consent Order dated September 27, 2006 (Amended Consent Order) entered into by the Executive Director of EPC and James Winterroth, and also whether the EPC has jurisdiction to enter into the Amended Consent Order. Finally, if the Appellants do have standing and the EPC has jurisdiction to enter into the order, the issue is whether the Amended Consent Order complies with the EPC Wetland Rule Chapter 1-11 and the EPC Act.

PRELIMINARY STATEMENT

The EPC and James Winterroth entered into the Amended Consent Order on September 27, 2006. The Amended Consent Order addresses a historic wetland violation on the property, owned by James Winterroth and his wife, located in Shadow Run Subdivision in Hillsborough County, Florida. The Amended Consent Order authorizes some wetland impact for the purpose of constructing a single-family residence on the property, and provides for mitigation for those wetland impacts.

The Appellants are adjacent property owners who timely filed an administrative appeal pursuant to Section 9 of the EPC Act challenging entry of the Amended Consent Order. The EPC referred the appeal to the Hearing Officer on November 1, 2006. A pre-hearing motion for summary final order by Appellants was denied by the Hearing Officer in an order dated January 29, 2007. A pre-hearing motion by Respondents to dismiss the appeal on the basis of standing was denied by the Hearing Officer in an order dated February 19, 2007 without prejudice to raise the issue at the evidentiary hearing. The Hearing Officer denied a motion for reconsideration of the order denying a motion for summary final order filed by Appellants. The parties entered into a Joint Pre-hearing Stipulation (JPHS) on March 19, 2007.

The EPC and James Winterroth made a joint oral motion at hearing at the close of Appellants' case to dismiss the case on the basis that Appellants lacked standing to bring the appeal. [Transcript Page No.: 363-367, hereinafter (Tr. 363-367)] The Hearing Officer reserved ruling on that motion. (Tr. 387) The EPC ordered a transcript of the final hearing and the parties were given fifteen (15) days from the date of filing of the transcript in which to file proposed recommended orders and argument. (Tr. 660) The transcript was filed April 16, 2007. By agreement of the parties, the due date for proposed recommended orders was established as May 2, 2007. Respondents' Joint Proposed Recommended Order was timely filed on May 2, 2007.

WITNESSES AND EXPERTISE

The Appellants called Celina Jozsi and Richard D. Garrity, Ph.D. as witnesses. The EPC called the following witnesses: (1) Jadell Kerr, who was accepted as an expert

in the areas of wetlands and wetland delineations (Tr. 405); and (2) Pete Owens, who was accepted as an expert in stormwater hydrology reviews and the criteria in the EPC Wetland Rule Chapter 1-11 regarding hydrology, wetland water regimes and the application of the EPC Wetland Rule Chapter 1-11 regarding wetland hydrology. (Tr. 592-593) James Winterroth called the following witnesses: (1) Perry Horner, who was accepted as an expert in the fields of wetland identification and delineation, mitigation and restoration, single family home site development plans and permitting of single family homes (Tr. 463); and (2) James Winterroth.

EXHIBITS

The Appellants entered 27 exhibits into evidence. The EPC and James Winterroth entered 5 exhibits into evidence.

FINDINGS OF FACT

1. The property at issue in this matter is located at Lake Hills Drive, Shadow Run Subdivision. Lot 28, Block 14, Unit 2; Hillsborough County, Florida - Folio #76828.6098 (Property). The Property is a platted single-family residential lot. (Joint Pre-hearing Stipulation of the parties dated March 19, 2007, hereinafter JPHS, page 6, Tr. 424)

2. Shadow Run Subdivision was platted prior to the adoption of the EPC Wetland Rule in 1985. (Tr. 405-406) The EPC recognizes a form of grandfathering for the platted lots in this subdivision in that they may be used for residential purposes even if the lots contain wetlands. (Tr. 406)

3. The Property contains seepage slope wetlands that were impacted by

clearing and filling in approximately January 1996 without the required authorization from the EPC Executive Director. (JPHS, page 7; Exhibit 1; Tr. 415-416, 558)

4. Appellants, individuals, reside at 12616 Lake Hills Drive, Riverview, Florida, which is adjacent to the Property. (JPHS, page 7; Tr. 145)

5. Appellants' property is downstream of a seepage slope wetland, and the lawn and driveway can be wet. (Tr. 147, 231, 415-416)

6. James Winterroth purchased the Property with his wife in approximately September 2003. (JPHS, page 7; Tr. 620)

7. As stipulated by the parties, the current wetland boundary for purposes of this matter is that area depicted on the 1996 Special Purpose Survey of the Property and is reflected on the site plan attached to the 2006 Amended Consent Order. (JPHS, page 7; Tr. 412-413)

8. The unauthorized wetland impacts in 1996 were not resolved by the previous owners. (Exhibits 2 and 3)

9. The EPC and James Winterroth subsequently entered into a Consent Order on August 30, 2005 to resolve the historic wetland violation. (Exhibit 2; Tr. 430, 628)

10. The EPC and James Winterroth subsequently entered into an Amended Consent Order on September 27, 2006 to resolve the historic wetland violation on the Property and to authorize some fill in the 1996 wetland area to remain on the Property to allow development of the Property. (JPHS, page 7; Exhibit 3; Tr. 633)

11. The Amended Consent Order authorizes historic wetland fill to remain on the Property so as to allow Mr. Winterroth to construct a single-family residence.

(Exhibit 3; Tr. 421)

12. No competent evidence was presented that supports any allegation of the Appellants that they will be aggrieved or adversely affected by the entry of the Amended Consent Order.

13. No competent evidence was presented that supports any allegation of the Appellants that they will suffer injury in fact which is of sufficient immediacy to entitle the Appellants to a hearing under the appropriate law.

14. Appellants failed to link the activities authorized by the Amended Consent Order to any actual flooding or drainage impacts to Appellants' property. Appellants merely speculate that such impacts might occur.

15. The Respondents presented evidence that the Appellants' property will not be adversely affected by flooding or any other aspect approved through the Amended Consent Order. (Tr. 491, 494-495, 499)

16. Seepage slope wetlands like those on the Property do not provide any significant flood water attenuation. (Tr. 609-610, 616)

CONCLUSIONS OF LAW

1. The Hearing Officer has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended (EPC Act), and Section 1-2.30, Rules of the EPC.

2. Respondent EPC is a local regulatory agency authorized to enforce the EPC Act and the Rules promulgated thereunder, including specifically the EPC Wetland Rule Chapter 1-11, in Hillsborough County, Florida.

3. Pursuant to Section 9 of the EPC Act, any person aggrieved by an action of the EPC's Executive Director has the right to appeal that decision to the Commission of the EPC. In addition, Section 1-2.30, Rules of the EPC, states that any person who has received a written decision of the Executive Director *pursuant to* the EPC Act (meaning that the person is specifically entitled to notice pursuant to the EPC Act) and any person whose interests protected by the EPC Act are adversely affected by an action or decision of the Executive Director, may obtain administrative review of the basis for the action or decision by appealing to the Commission.

4. To demonstrate standing a party must show they will be aggrieved or adversely impacted by the decision of the EPC's Executive Director. Rule 1-2.30(c)(2), Rules of the EPC requires the appeal include a statement of "how the Appellants will be aggrieved or how his or her interests will be adversely affected by the Executive Director's determination."

5. Although there are no final orders of the EPC that define "aggrieved" or "adversely affected" in the terms of who may challenge EPC final agency action, Florida administrative law as set forth in Chapter 120, Florida Statutes, may be used to interpret "adversely affected" and determine legal standing. Pursuant to Chapter 120, Florida Statutes, in order to obtain standing to challenge an environmental decision or permit, a third party appellant must show (1) that the appellant will suffer injury in fact which is of sufficient immediacy to entitle the appellant to a hearing under the

appropriate law, in this matter Section 9 of the EPC Act, and (2) that the injury is of a type or nature which the proceeding is designed to protect. Friends of Matanzas v. Department of Environmental Protection, 729 So.2d 437 (Fla. 5th DCA 1999) and Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1989).

6. Under the first prong of the standing test, the Appellants must show they will suffer injury in fact which is of sufficient immediacy to entitle the Appellant to a hearing. The Appellants have failed to provide *any* evidence they will suffer injury from the proposed consent order. Appellants' mere speculation that their property could suffer flooding or drainage impacts, or that the property might be devalued, does not constitute an injury in fact of sufficient immediacy to entitle Appellants to a hearing. Ameristeel Corporation, 691 So.2d at 477-478; International Jai-Alai Players Association v. Florida Pari-Mutuel Commission, 561 So.2d 1224, 1225 (Fla. 3d DCA 1990); Florida Society of Ophthalmology v. State Board of Optometry, 532 So.2d 1279, 1285 (Fla. 1st DCA 1988); Village Park Mobile Homes Association, Inc. v. Department of Business Regulation, 506 So.2d 426, 434 (Fla. 1st DCA 1987). The Appellants have failed to show any direct relationship between the EPC's approval of impacts to certain wetland areas and any immediate negative impact to their property from drainage or flooding.

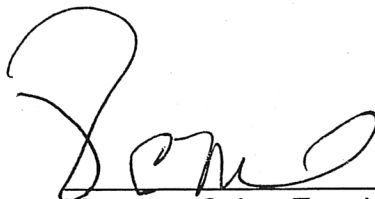
7. Under the second prong of the standing test the injury must be of a type or nature that the proceeding is designed to protect. However, we do not reach this or the other issues presented in this appeal as we have already found that Appellants failed to satisfy the first part of the test.

RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order dismissing the Notice of Appeal of the Appellants based on the lack of standing. In addition, the Final Order should incorporate the findings and conclusion contained within the Amended Consent Order.

Respectfully submitted,

Dated: 5-31-07



Vanessa Cohn, Esquire
Hearing Officer for
Environmental Protection Commission of
Hillsborough County
302 Knights Run Ave., Suite 1100
Tampa, FL 33602-3343

cc: T. Andrew Zodrow, Esq.
Margaret M. Craig, Esq.
Marsha G. Rydberg, Esq.