

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

**ROBERT VANCE,**

**Appellant,**

**vs.**

**EPC CASE NO. 15-EPC-001**

**JOHN VATH and ENVIRONMENTAL  
PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,**

**Appellees.**

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**FINAL ORDER**

In accordance with Chapter 84-446, as amended, Laws of Florida (EPC Act) and Chapter 1-2, Rules of the EPC, an administrative hearing (a/k/a Section 9 Appeal) was conducted and the assigned Hearing Officer submitted a Recommended Order (RO) to the Environmental Protection Commission of Hillsborough County (EPC) on July 13, 2015. The Recommended Order is attached as **Exhibit 1**. No party filed any exceptions to the RO. On August 20, 2015, this matter came before the Commissioners of the EPC for review and issuance of a final order.

**BACKGROUND**

1. Pursuant to the *Amended and Restated Interlocal agreement between the Tampa Port Authority (TPA) and the EPC* dated June 23, 2009 (TPA Delegation Agreement) the EPC was delegated the TPA's authority to process dock permit applications in accordance with Chapter 95-488 (TPA Enabling Act) and the TPA's Submerged Lands Management (SLM) Rules.

2. On January 8, 2015, the EPC Executive Director granted the Appellee John Vath's application for a Minor Work Permit for the installation of two (2) tie poles to an existing structure, the after-the-fact approval of the existing structure, the addition of a covered boat lift, and a seawall

repair on jurisdictional surface waters associated with Mr. Vath's property at 905 Apollo Beach Boulevard, Apollo Beach, Florida (Property).

3. Robert Vance (Appellant) filed an appeal challenging the issuance of the permit.

4. Steven Pfeiffer, Esq. was assigned as the Hearing Officer to the case. An administrative hearing was held on June 1, 2015, in Hillsborough County, Florida to formulate final agency action on Mr. Vath's application for marine construction activities in jurisdictional waters.

5. The Hearing Officer subsequently issued a Recommended Order (RO) on July 13, 2015. The RO is attached as Exhibit 1.

6. The Hearing Officer recommended that the Commission approve the permit.

7. None of the parties filed exceptions to the RO, thus oral arguments by the parties were not required to be presented to the Commission on August 20, 2015.

#### **STANDARDS OF REVIEW FOR RECOMMENDED ORDERS**

8. Pursuant to sections 1-2.35(c), (e) and (f), Rules of the EPC:

(c) If no exceptions are timely filed, the Commission shall adopt the Hearing Officer's findings of fact, and shall make appropriate conclusions of law, and render a Final Order.

(e) The Commission may reject, reverse or modify a finding of fact only if it finds that the fact is not supported by substantial competent evidence in the record.

(f) The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act or the rules enacted pursuant to said act.

The EPC local regulatory programs are not subject to Chapter 120, Florida Statutes (Administrative Procedures Act), but for purposes of EPC administrative hearings Chapter 120 jurisprudence is persuasive at a minimum.

9. The agency reviewing the RO may not reject or modify the findings of fact of a hearing officer unless they are not supported by substantial competent evidence in the record. Section 1-2.35, Rules of the EPC and Charlotte County v. IMC Phosphates Co., 18 So. 3d 1089

(Fla. 2d DCA 2009). The term “competent substantial evidence” does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, competent substantial evidence refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers v. Dep’t of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Env’tl. Prot.*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.*, 652 So.2d 894 (Fla. 2d. DCA 1995). These evidentiary-related matters are within the province of the hearing officer, as the “fact-finder” in these administrative proceedings. *See e.g., Tedder v. Fla. Parole Comm’n*, 842 So.2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz v. Dep’t of Bus. Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Also, the hearing officer’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See e.g., Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.*, 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State Dep’t of Health and Rehabilitative Services*, 462 So.2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n*, 436 So.2d 383, 389 (Fla. 5th DCA 1983).

A reviewing agency thus has no authority to evaluate the quantity and quality of the evidence presented at an administrative hearing, beyond making a determination that the evidence is competent and substantial. *See, e.g., Brogan v. Carter*, 671 So.2d 822, 823 (Fla. 1st DCA 1996).

10. An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. *Public Employees Relations Commission v. Dade County Police Benevolent Association*, 467 So. 2d 987 (Fla. 1985). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless clearly erroneous. *Falk v. Beard*, 614 So. 2d 1086 (Fla. 1993); *Department of Environmental Regulation v. Goldring*, 477 So.2d 532 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is

enough if such agency interpretations are “permissible” ones. Suddath Van Lines, Inc. v. Department of Environmental Protection, 668 So. 2d 209 (Fla. 1<sup>st</sup> DCA 1996).

### **FINDINGS OF FACT**

11. No exceptions were filed challenging the validity of the Hearing Officer’s findings of fact in the Recommended Order. In accordance with section 1-2.35(c), Rules of the EPC, the Commission shall adopt the Hearing Officer’s findings of fact, because the findings of fact are supported by competent substantial evidence and no exceptions were timely filed.

### **CONCLUSIONS OF LAW**

12. No exceptions were filed challenging the validity of the Hearing Officer’s conclusions of law in the Recommended Order. The conclusions of law do not conflict with or nullify applicable provisions of law.

13. The permit meets the standards of the EPC Act, Chapter 1-11 (Rules of the EPC), Tampa Port Authority’s Enabling Act, and Submerged Lands Management Rules.

In accordance with the vote of the Environmental Protection Commission of Hillsborough County on August 20, 2015, it is

### **ORDERED** that:

A. The Findings of Fact and Conclusions of Law in the Recommended Order (Exhibit 1) are adopted in their entirety.

B. The Recommended Order’s “Recommendation” section is AFFIRMED and the proposed Minor Work Permit is APPROVED. The permit expiration date shall be one year from the date this order is executed.

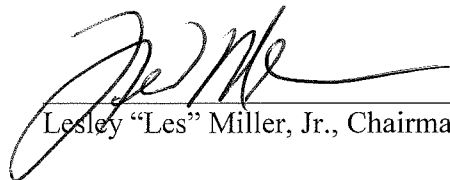
### **NOTICE OF RIGHTS**

Any party to this order has the right to seek judicial review of this Final Order in

accordance with Section 9 of the EPC Act and the Administrative Procedure Act, Chapter 120, part III, 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. The notice of appeal must be filed within 30 days from the date this order is filed with the Agency Clerk.

**DONE and ORDERED** this 24<sup>th</sup> day of August, 2015, in Hillsborough County, Florida.

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY

  
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Lesley "Les" Miller, Jr., Chairman

cc: Steven Pfeiffer, Esq., Hearing Officer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Final Order has been furnished to the parties and their representatives listed below by e-mail or U.S. mail as noted below on this 25<sup>th</sup> day of August 2015.

Andrew Zodrow, Esq., ( [zodrow@epchc.org](mailto:zodrow@epchc.org) )  
Rick Tschantz, Esq., ( [tschantz@epchc.org](mailto:tschantz@epchc.org) )  
Jeannette Figari, ( [figarij@epchc.org](mailto:figarij@epchc.org) )  
John Vath, c/o of Joe Vath ( [joe@645dock.com](mailto:joe@645dock.com) )  
Robert Vance ( [gvance2@tampabay.rr.com](mailto:gvance2@tampabay.rr.com) )  
John Vath, 905 Apollo Beach Blvd., Apollo Beach, FL 33572

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY

  
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July 13, 2015

Ms. Jeanette Figari  
Environmental Protection Commission of  
Hillsborough County  
3629 Queen Palm Drive  
Tampa, FL 33619

Re: EPC Case No. 15-EPC-001, Recommended Order

Dear Ms. Figari:

I have enclosed my Recommended Order in the above proceeding. I have also enclosed, by e-mail communication, an electronic copy of the transcript of the formal hearing prepared by the court reporter; Exhibits 1, 2, 3, 4, 5, 6, 7, and 8, all of which were received as part of the record at the hearing; and the post-hearing Proposed Recommended Order submitted by the Environmental Protection Commission.

Thank you for your assistance in making arrangements for the hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Pfeiffer". The signature is stylized and cursive.

Steven Pfeiffer,  
Hearing Officer

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**RECOMMENDED ORDER**

This is an appeal proceeding conducted in accordance with Part IV, Chapter 1-2 of the Rules of the Environmental Protection Commission of Hillsborough County.

**A. The Parties.**

The parties are as follows:

1. The Appellant is Robert Vance. Mr. Vance represented himself at the hearing.
2. The Appellee John Vath is the applicant for a Minor Work Permit. Mr. Vath represented himself at the hearing, accompanied by Joe Vath, the Appellee John Vath's construction agent.
3. The Appellee Environmental Protection Commission of Hillsborough County (EPC) is the permitting agency. EPC was represented at the hearing by Andrew Zodrow, Esq.

**B. Proceedings Before the EPC.**

On or about August 29, 2014, John Vath submitted an application to the EPC for a Minor Work Permit. Mr. Vath was seeking a permit that would allow after-the-fact approval of an existing dock structure, installation of two tie poles as an addition to the existing dock structure, the addition of a covered boat lift, and seawall repair. The existing dock structure and the additions and improvements are to be located adjacent to property owned by Mr. Vath at 905 Apollo Beach, Blvd, Apollo Beach, Florida. The work is proposed in jurisdictional surface waters. The Tampa Port Authority has regulatory authority regarding these waters and is the



permitting agency for the work proposed by Mr. Vath. The Tampa Port Authority has delegated Minor Work Permit authority and administration of Minor Work Permitting to the EPC.

On or about January 8, 2015, the EPC granted a Minor Work Permit to Mr. Vath. Thereafter the Appellant, Mr. Vance, challenged the permit through the EPC's administrative process which is applicable to this proceeding. Mr. Vance contends that the permit should not have been issued because the original structure was constructed without required permits and because the structure will be used in a manner that is not consistent with land use regulations regarding use of a dock structure.

**C. Proceedings Before the Hearing Officer.**

This proceeding was assigned to the undersigned Hearing Officer. A prehearing conference was conducted by conference telephone communication on April 24, 2015. An "Order Setting Final Hearing and Order of Pre-Hearing Instructions" was issued on May 4, 2015. The Final Hearing was scheduled for and was conducted on June 1, 2015, at the Offices of the EPC, 3629 Queen Palm Drive, Tampa, Florida.

The EPC called Christina Bryant, who manages the EPC Minor Work Permit Section as a witness. Ms. Bryant was accepted as an expert witness regarding the application of the Tampa Port Authority's Submerged Lands Management Rules and the Port's Enabling Act. The Appellee John Vath and Joe Vath, who operates a marine construction company, testified on behalf of John Vath. Mr. Vance testified on his own behalf, and called James Burnett, a resident of Apollo Beach, whose property is located near to site of the construction activities, as an additional witness. All of the witnesses were sworn and subject to cross-examination.

Exhibits 1, 2, 3, 4, 5, 6, 7 and 8 were identified and received as part of the record. Exhibit 1 is the Joint Prehearing Stipulation that was submitted by the parties. Exhibit 2 is the appeal submitted by Mr. Vance. Exhibit 3 is the professional resume of the witness Christina Bryant. Exhibit 4 is the Permit File assembled by the EPC Minor Work Permit Section. Exhibit 5 is the Minor Work Permit issued by the EPC. Exhibit 6 is the Amended and Restated Interlocal Agreement between the Tampa Port Authority and the EPC. Exhibit 7 is a compendium of Code Enforcement materials maintained by the Hillsborough County Code Enforcement Department. Exhibit 8 includes two photographs of the structure that is the subject of the permit proceeding.

The proceedings were recorded by a certified court reporter. A transcript of the hearing was prepared and filed on June 9, 2015. In accordance with discussions at the conclusion of the hearing, the parties were given an opportunity to submit post-hearing proposed orders or closing arguments. The EPC has filed a "Proposed Recommended Order with Findings of Fact and Conclusions of Law".

### Issue

The issue in this proceeding is whether the Minor Work Permit issued by the Executive Director of the EPC should be set aside because it in part authorizes construction activities that were originally undertaken without required permits, and because the dock and associated facilities are being used or are going to be used for commercial purposes, contrary to land use requirements of the Tampa Port Authority and of Hillsborough County.

### Findings of Fact

1. The Environmental Protection Commission of Hillsborough County (EPC) is a local environmental regulatory agency. The EPC is authorized to enforce the Hillsborough Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495, Laws of Florida (the "EPC Act"), and rules promulgated by the EPC.

2. The Appellee John Vath applied for a permit to construct a seawall and dock facilities adjacent to his property. His property is located at 905 Apollo Beach Blvd., Apollo Beach, Florida.

3. The Tampa Port Authority has jurisdiction over and responsibility for administering permitting functions with regard to construction activities within certain waters, including the waters where the Appellee Vath's proposed construction activities are located. The Tampa Port Authority has delegated certain of its permitting responsibilities, called "Minor Works Permits" to the Appellee EPC through an interlocal agreement. The work proposed by Appellee Vath is subject to Minor Works Permitting requirements.

4. The Appellant Robert Vance owns property located at 6506 Bimini Court, Apollo Beach, Florida. The Appellant's property is situated in a manner that operation of the docking facilities permitted on Appellee's property could impact Appellant Vance's use and enjoyment of his property, and his interests would, if the dock were used for commercial purposes, be adversely affected by operation of the docking facility .

5. The linear distance of the shoreline of Appellee Vath's property is 65.34 feet.

6. A dock has been located adjacent to Appellee Vath's property at least since 2006. The dock was subject to permitting authority of the Tampa Port Authority, but was constructed without any permit being issued. The dock was constructed before Appellee Vath purchased the property.

7. It is not contested that the proposed dock and associated facilities proposed by the Appellee Vath meet requirements of the Tampa Port Authority and the EPC with regard to size, navigational constraints, and other construction related issues.

8. Hillsborough County has land use authority with respect to Appellee Vath's property, including the dock and associated facilities that are the subject of this proceeding. Hillsborough County administers its land use authority through its Planning Commission. The Planning Commission does not object to the structures proposed by the Appellee Vath, and considers the structures to be consistent with and in compliance with adopted and applicable provisions of the Hillsborough County Comprehensive Plan and zoning ordinances.

9. It does appear that Appellee Vath has in the past undertaken activities on his upland property that are not consistent with provisions of the Hillsborough County Comprehensive Plan and zoning ordinances. On at least one occasion, the Appellee Vath docked a commercial barge at the docking facilities located adjacent to his property. The docking of a commercial barge would not be consistent with non-commercial use of the dock facilities. The barge is not now kept at the docking facility, and Appellee Vath does not intend to keep it there.

#### **Conclusions of Law**

10. The undersigned Hearing Officer has jurisdiction to conduct the hearing and to enter this order in accordance with the Hillsborough Environmental Protection Act and in accordance with the Rules of the EPC. See: Part IV, Section 1-2, Rules of the Environmental Protection Commission of Hillsborough County. This is a de novo proceeding. Section 1-2.33(d), Rules of the Environmental Protection Commission of Hillsborough County.

11. The EPC is a local regulatory agency authorized to enforce the EPC Act. The EPC has jurisdiction to administer Minor Works Permitting Activities within the authority of the Tampa Port Authority in accordance with the Amended and Restated Interlocal Agreement between the Tampa Port Authority and the Environmental Protection Commission of Hillsborough County.

12. The order of proof and the burden of proof for parties in permit application proceedings were delineated by the EPC in Romano v. City of Tampa and EPC (EPC Final Order, February 3, 2011). The EPC stated:

If a regulatory agency gives notice of intent to grant a permit application, the applicant has the initial burden at a formal administrative hearing of going forward with the presentation of a prima facie case of the applicant's entitlement to a permit. Once a prima facie case is made, the burden of going forward shifts to the party objecting to the action to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit. Unless the objector presents "contrary evidence of equivalent quality" to that presented by the applicant and agency, the permit must be approved. Rule 1 -2.33(d), Rules of the EPC; Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d at 789-90.

13. In the instant proceeding the Appellee Vath and the EPC have made a prima facie showing that the Appellee Vath is entitled to a permit and that the permit was correctly issued by the EPC. The proposed construction activities meet all requirements of the Tampa Port Authority and of the EPC. The EPC staff examined land classifications, set-back requirements, navigation issues, and limitations related to the extent of the property owner's waterfront ownership. The proposed work meets all of these requirements.

14. The dock that was built on Appellee Vath's property in 2006 or before was subject to permitting requirements. The fact that the work was completed illegally, without the required permit, does not prevent the EPC from issuing a permit for the work "after-the-fact", provided that the facility meets requirements of the Tampa Port Authority and the EPC. The dock originally constructed without a permit does meet these requirements. There is nothing in the rules of the Port Authority or of the EPC that prohibit issuance of after-the-fact permits, and the EPC has reviewed and approved such permits in the past. The EPC reviews applications for "after-the-fact" permits in the same manner that it reviews applications for work that has not commenced. The standards applied by the EPC are not relaxed for such permit applications, but neither are additional requirements imposed.

15. While there is evidence that Appellee Vath has conducted land use activities on his property that are not consistent with zoning ordinances of Hillsborough County, it is apparent that the dock and associated facilities that are the subject of the permits at issue in this proceeding are not inconsistent with the comprehensive plan or zoning regulations of the Hillsborough County. While it is possible that the docking facility could be used in a manner that is not consistent with the comprehensive plan or zoning ordinances of Hillsborough County, the facility itself is consistent with those requirements.

16. Even if it could be taken as a fact that the Appellee Vath will at some time in the future violate provisions of the planning or zoning requirements of Hillsborough County, there is nothing in the regulatory authority of the EPC that would allow it to take either preemptive action in a permitting proceeding, or enforcement action later with regard to those violations.

17. The EPC has authority to deny a permit application if an applicant is proposing to construct a facility that in and of itself is inconsistent with applicable provisions of a comprehensive plan or zoning ordinance. The EPC, however, does not have authority to enforce provisions of the Hillsborough County Comprehensive Plan or zoning ordinances based upon an owner's use of an otherwise conforming facility.

18. The Minor Works Permit issued by the EPC should be affirmed, and this appeal should be dismissed.

**Recommended Order**

Whereupon, based upon the foregoing Findings of Fact and Conclusions of Law, it is, hereby,

**Recommended:**

That the Environmental Protection Commission of Hillsborough County enter a final order affirming the action taken by the Executive Director of the EPC, approving the Minor Works Permit, and dismissing this appeal.

ENTERED this 13<sup>th</sup> day of July, 2015.



Steven Pfeiffer, Hearing Officer  
520 East Georgia Street  
Tallahassee, Florida 32303

Telephone: 941-356-1667  
Email: [gspfeiffer@aol.com](mailto:gspfeiffer@aol.com)

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Andrew Zodrow [ZodrowA@epchc.org](mailto:ZodrowA@epchc.org)

Jeanette Figari [FigariJ@epchc.org](mailto:FigariJ@epchc.org)

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**ADDENDUM TO RECOMMENDED ORDER, RECORD BASIS FOR FINDINGS OF FACT**

The record basis for the correspondingly numbered findings of fact set out in the Recommended Order are as follows:

1. This finding is determined from the Joint Prehearing Stipulation filed by the Parties (Exhibit 1), and from the cited provisions of the Hillsborough County Environmental Protection Act and the Rules of the EPC.
2. This finding is determined from the Joint Prehearing Stipulation filed by the Parties (Exhibit 1), Exhibit 4, and the testimony of the witnesses Christina Bryant, John Vath and Joe Vath.
3. This finding is determined from the Joint Prehearing Stipulation filed by the Parties (Exhibit 1), Exhibit 6, and the testimony of the witness Christina Bryant.
4. This finding is determined from the Joint Prehearing Stipulation filed by the Parties (Exhibit 1), Exhibit 2, and the testimony of the witnesses Robert Vance and James Burnett.
5. This finding is determined from the Joint Prehearing Stipulation filed by the Parties (Exhibit 1), Exhibits 4 and 5, and the testimony of the witness Christina Bryant.
6. This finding is determined from Exhibits 2, 4, and 5, and the testimony of the witnesses Christina Bryant, John Vath and Joe Vath.
7. This finding is determined from the Joint Prehearing Stipulation filed by the Parties (Exhibit 1), and from the testimony of the witness Robert Vance.

8. This finding is determined from the testimony of the witness Christina Bryant.

9. This finding is determined from Exhibits 7 and 8, and from the testimony of the witnesses Robert Vance, James Burnett, and John Vath.