

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Willow Lakes RV Resort WWTF

OGC Case No. OGC 17-0281

Petition for Variance from

Rule 62-610.421(2)(c), F.A.C.

DEP File No.: FLA010358

FINAL ORDER GRANTING PETITION FOR VARIANCE

On June 1, 2017, Willow Lakes RV Resort Condominium Association, Inc., (Petitioner), filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes, variance from the requirements of Rule 62-610.421(2)(c), Florida Administrative Code (F.A.C.). The petition requests a permanent variance to expand an existing drip disposal system.

1. Subsection 62-610.412(2)(c) F.A.C., establishes setback distance requirements for "slow rate land application systems." The rule provides that "If subsurface application systems are used, the setback distance to the site property line shall be . . . 30 feet." If subsurface application systems are used and if high-level disinfection is provided, the setback distance to the site property line shall be reduced to 10 feet." The requested variance would allow expansion of the effluent drip disposal systems at the setback distances of 15 feet from the eastern property line and 12 feet from interior lots. The petition has been assigned OGC Case No. 17-0281.

2. The Petitioner requested a variance to allow expansion of the effluent drip disposal systems at the setback distances of 15 feet from the eastern property line and 12 feet for interior lot lines. The Petitioner's Waste Water Treatment Facility (WWTF) is located at 2850 Frontier Drive, Titusville, Florida. The existing WWTF permit has flow capacity of 0.050 MGD and has approximately 136,630 square feet total wetted area of a subsurface slow-rate restricted access land application system. The current permit also requires high level disinfection because of setback distances to a potable water well, interior lot lines, and property line.

3. The WWTF is currently unable to consistently meet the permitted effluent Total Suspended Solids (TSS) limit of 5 mg/L. High level disinfection is required because there is a potable water well located within 500 feet of the effluent drip disposal system on Fairway 5, as well as the minimum setback distances to property lines from the other dripper systems. The entirety of Fairway Five is within 500 feet of the potable water well.

4. On March 31, 2017, Petitioner submitted an application for a substantial permit modification to the Department. The Petitioner proposes to abandon the existing dripper system on Fairway 5 and establish the TSS maximum single sample limit at 10 mg/L. The Fairway 5 dripper system will be no longer be used and will be physically disconnected from the dripper

system. The drip disposal system in Fairways 6, 7, and 8 will be expanded to 7,478 SF, 8,760 SF, and 9,661 SF, respectively, for a total of 25,899 SF to replace some of the capacity lost by the removal of Fairway 5 dripper system. The new total square footage of the dripper systems will be 89,071 SF (2.044 acres) and the loading rate will remain 4.11 inches per week. The removal of the Fairway 5 drip disposal system will result in the facility no longer having reduced set back to a well.

5. High-level disinfection requires a limit of 5.0 milligrams of TSS prior to application of chlorine and a chlorine residual of 1.0 mg/L in the effluent. Consistent with the requested variance, the permit for the facility will be revised to reflect the removal of Fairway 5 drip disposal system. The permit will also be revised to expand the existing effluent drip disposal system in Fairways 6, 7 and 8. The substantially revised permit will require a TSS of 10.0 mg/L which is a more stringent level than normally required for basic disinfection and the Department will require the higher chlorine residual of 1.0 mg/L in the effluent, which is the same as high level disinfection. The TSS limit of 10.0 mg/L will be measured after final treatment at the WWTF.

6. The Petitioner has demonstrated that the application of the rule would create a substantial hardship. The existing Willow Lakes property does not have the available open space or suitable area to replace or relocate the required effluent disposal system due to the same setback restrictions and proximity to the water table. The Petitioner has also been unable to acquire off site property to relocate the effluent dripper systems.

7. Florida Administrative Code Rule 62-600.440(5)(f)3, implements Sections 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, and 403.088, Florida Statutes. The purpose of the underlying statutes is to "ensure compliance with water quality and drinking water standards, and to protect the public health, safety and welfare."

8. The Petitioner has demonstrated the purpose of the underlying statutes will be achieved through other means:

(a) Ground water quality standards as demonstrated by the ground water monitoring wells will be met as required by regulation.

(b) Public health will not be adversely affected by the operation or expansion of the effluent dripper systems. The site's potable water well will have a greater setback from the existing well to the dripper system than it has currently and will be greater than 500 feet.

(c) The reclaimed water will meet a TSS criteria higher than what is required for basic disinfection and the same chlorine residual level will be required as for high-level disinfection, and water quality standards will be met.

(d) Public welfare will not be adversely affected. The public benefits from less costly service that meets all underlying water quality regulations.

9. No public comment was received concerning Notice of receipt that was published in the FAR on June 6, 2017.

10. Based on the foregoing, Petitioner has demonstrated that it meets the requirements for a variance from Florida Administrative Code Rule 62-610.421(2)(c). The petition for variance is granted subject to the following conditions:

The requested variance would allow expansion of the drip disposal systems at the current the setback distances of 15 feet from the eastern property line and 12 feet from interior lots.

The approval and issuance of the substantial permit modification is contingent on the approval of the requested variance. The approval and implementation of the variance is contingent upon the approval of the request permit modification.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the request for a variance or waiver.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, telephone number, and any e-mail address of the petitioner; the name, address, telephone number, and any e-mail address of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing must be filed within 21 days of receipt of this written notice. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

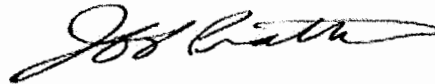
Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules

9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this action is filed with the Clerk of the Department.

DONE AND ORDERED this 20th day of July 2017 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Jeff Prather
Director, Central District

Attachments: Variance Petition Exhibit (3 pages)

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this Order and all copies were sent on the filing date below to the following listed persons:

Charles LeGros, DEP, charles.legros@dep.state.fl.us

Reggie Phillips, DEP, Reggie.Phillips@dep.state.fl.us

Jeff Longshore, PE, Nelson Engineering Company, j.longshore@nelsonengrco.com

Douglas Beason, FDEP, OGC, doug.beason@dep.state.fl.us

Sharon Sawicki, PE, FDEP, Tallahassee, Sharon.sawicki@dep.state.fl.us

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Mandakini Patel
Clerk

July 20, 2017
Date



RECEIVED

June 1, 2017

Dept. of Environmental Protection
Office of General Counsel

RECEIVED

JUN 01 2017

DEP Central Dist.

May 30, 2017

FDEP Central District Office
3319 Maguire Blvd, Suite 232
Orlando, Florida 32803
Attn.: Charles LeGros
charles.legros@dep.state.fl.us

SUBJECT: Willow Lakes RV Resort WWTF FLA010358 – Petition for Variance from Rule 62-610.421(2)(c)

Petitioner:
Brian Strickland, President
Willow Lakes RV Resort Condominium Association, Inc.
2850 Frontier Drive
Titusville, FL 32796

Engineer:
Jeffrey S. Longshore
Nelson Engineering, Co.
5335 N. Courtenay Pkwy.
Merritt Island, FL 32953

On behalf of the Willow Lakes RV Resort Condominium Association, Inc., Nelson Engineering submits this petition, pursuant to Florida Statute (F.S.) Section 120.542, for a variance from Rule 62-610.421(2)(c) Florida Administrative Code (F.A.C.). Please note that this Petition for Variance has been submitted to Florida Office of General Counsel, Florida Joint Administrative Procedures Committee, and Florida Department of Environmental Protection (FDEP) Central District Office.

Rule 62-610.421(2)(c), F.A.C. provides setback distance requirements for “slow-rate land application systems with restricted public access” and states, “If subsurface application systems are used, no setback distances to buildings are required. If subsurface application systems are used, the setback distance to the site property line shall be reduced to 30 feet. If subsurface application systems are used and if high-level disinfection is provided, the setback distance to the site property line shall be reduced to 10 feet.”

Rule 62-610.421(2)(c), F.A.C. is implementing F.S. 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, and 403.088.

Background

The Willow Lakes Wastewater Treatment Facility (WWTF) is unable to consistently meet the permitted effluent total suspended solids (TSS) limit of 5 mg/L. The normal or “Basic” permitted TSS level for a WWTF is 10 mg/L. The Willow Lakes WWTF is held to “high disinfection” TSS limit due to a potable water well existing within 500 feet of the effluent drip disposal system on Fairway 5. The entirety of fairway five is within 500 feet of the potable water well. A Permit

Modification Application was submitted to the FDEP Central District on March 31, 2017 and proposes to abandon the existing effluent drip disposal system on Fairway 5 and establish the "Basic" TSS limit to 10 mg/L. Removing the effluent drip disposal system on Fairway 5 reduces the capacity of effluent drip disposal system and requires expansion of the existing effluent drip disposal system in Fairways 6, 7 and 8.

Type of Action Requested

In conjunction with the Substantial Modification Application, mentioned in the above paragraph, the Petitioner is requesting authorization for a permanent variance request to maintain the existing setback distances of 15 feet from the Willow Lakes east property line and 12 feet from the Willow Lakes interior lot lines for the existing effluent drip disposal system and proposed expansion. The existing setbacks conflict with Rule 62-610.421(2)(c), F.A.C., which requires a 30 foot setback distance to the property line. The required setback distances increased from 10 feet to 30 feet due to the change from high disinfection levels to basic disinfection levels.

Hardship Demonstration and Discussion

The following specific facts demonstrate a substantial hardship that justifies the requested variance:

Abandonment of the existing effluent drip disposal zone in Fairway 5 caused the existing effluent drip disposal system to be undersized. Denial of subject variance request would:

- Further reduce the disposal capacity of the existing effluent drip disposal system;
- Prevent the utilization of the existing, functioning effluent drip disposal system that is currently in operation; and
- Create a substantial financial and operational hardship.

Without causing substantial and immediate financial hardship, the existing Willow Lakes property does not have the available open space or suitable area to replace or relocate the required effluent disposal system due to the same setback restrictions and proximity to the water table. Nearly all open spaces that could be modified to provide effluent disposal are at a lower elevation and would require substantial fill to bring the elevation of the effluent disposal system above the seasonal high water table as well as complete reconstruction of the impacted golf course fairways, tee boxes and greens. Impacting the golf course to this extent would also substantially reduce the Willow Lakes RV Resort Condominium Association's income provided by the golf course.

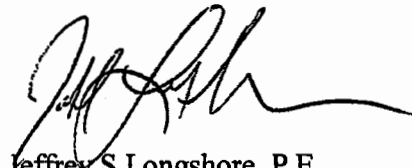
An alternative solution is to acquire property adjacent to Willow Lakes, which was attempted in 2016 and consisted of building two offsite effluent rapid infiltration basins (RIBs) on land acquired from Florida Inland Navigation District (F.I.N.D.) to the east of Fairway 8. The land would have to be obtained through a long term lease as F.I.N.D. was not willing to sell the land. F.I.N.D. is a government organization and had little incentive to lease the land. Leasing the land constitutes a substantial economic and legal hardship as the price would be prohibitively expensive, and the timeline associated with long term lease negotiations could not be controlled or guaranteed by the Petitioner.

Adherence to Florida Statute Intent

Florida Statute 403.021(2), F.A.C. states: "It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water." The requested variance serves the purpose of protecting the public water supply as stated in the underlying statutes by providing a means to replace the effluent drip disposal system that must be abandoned on Fairway 5 due to its inability to meet the total suspended solid limits for effluent subsurface discharge within 500 feet of a potable water well. The resulting noncompliance with basic disinfection levels setback distances does not endanger public health or degrade the quality of the public water supply due to the nature of the adjacent property uses. The property to the east, adjacent to the setbacks, is owned by the F.I.N.D. and is used for channel maintenance dredging spoils disposal from the Intracoastal Waterway in the Indian River. The F.I.N.D. property is not likely to be used as public access or residential development in the foreseeable future. Also, the residential properties to the west of the setbacks, within the Willow Lakes RV Resort, do not use potable well water.

Please do not hesitate to contact us at (321) 449-1128 if you have any questions.

Thank you,



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