

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

GEORGES BLAHA, et al.,)
)
 Petitioners,)
)
 v.)
)
 ST. JOHNS RIVER WATER) FILE OF RECORD NO. 81-235
 MANAGEMENT DISTRICT and)
 AQUARINA DEVELOPMENTS, INC.)
)
 Respondents.)
)
 _____)

FINAL ORDER

I. INTRODUCTION

On August 6, 1982, the duly appointed hearing officer in the above-styled matter submitted to St. Johns River Water Management District (hereinafter District), and all parties, a recommended order, consisting of findings of fact, conclusions of law, and a recommendation. A copy of said order is attached hereto as Exhibit A. Also, a copy of the recommended order dismissing Petitioner Blaha is attached as Exhibit B.

Pursuant to Section 40C-1.08(9), Florida Administrative Code, and Section 120.57(1)(b)(8), Florida Statutes, parties are allowed fourteen (14) days in which to submit written exceptions to the recommended order. Petitioners Blaha, Stoyke, Hiester, and Wolf filed written exceptions to the hearing officer's recommended order. Respondent Aquarina, hereinafter Aquarina, did not file exceptions to the hearing officer's recommended order.

Oral argument was held before the District Governing Board on September 7, 1982, with attorneys for the Respondent Aquarina, and the District participating along with Petitioners. The recommended order and exceptions came before the Governing Board as head of the District for final agency action in this matter, as well as consideration of the entire record, including a transcript of hearings, exhibits in evidence, all pleadings submitted, and the oral arguments of Counsel.

Section 120.57(1)(b)(9), Florida Statutes, prohibits an agency from rejecting or modifying a Division of Administrative Hearings hearing officer's findings of fact unless it can determine, after review of the complete record, that the findings were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. In determining that the hearing officer's findings of fact are supported by competent substantial evidence and cannot be lawfully disturbed, the District recognizes that the hearing officer's findings of fact should be accorded considerable weight. The hearing officer is a trier of fact who is best able to evaluate the credibility of witnesses and resolve conflicting testimony. Indeed, courts have cautioned administrative bodies from making a new judgment upon the evidence.

In no instance has the hearing officer in this case resolved disputed issues by entering a factual finding that is unsupported by competent substantial evidence. In fact, no petitioner has argued, via exceptions, that the contrary is the case. Furthermore, the entire record of this case reveals that the proceedings have complied with the essential requirements of law, including all the applicable provisions of Chapter 120, Florida Statutes. Again, no petitioner has urged that the proceedings varied from the essential requirements of law.

II. DISCUSSION OF THE DIVISION OF ADMINISTRATIVE HEARINGS
HEARING OFFICER'S FINDINGS OF FACT AND EXCEPTIONS
RELATED TO THOSE FINDINGS

Since the substance of the exceptions filed by Petitioners may be easily categorized and due to their importance, the District deems it appropriate to discuss them in some detail.

All the Petitioners filing exceptions individually questioned the burden of proof and whether Aquarina met its burden. The data presented regarding aquifer characteristics in the area revealed aquifer parameters which were testified to be expected or representative by experts for both the Petitioners and the

District. The only experts to give opinions as to the impact of the proposed Aquarina withdrawal on other uses as to both quality and quantity gave the opinion that the effects would be insignificant. For whatever reason, Petitioners' experts chose to give no opinions nor present any evidence as to these issues. The evidence was deemed sufficient by the hearing officer to support her findings of fact and no exceptions place any doubt on the propriety of this action. Petitioners suggest that scientific certainty is the standard which the District should use in evaluating the evidence submitted by Aquarina, but this is clearly not the case since the standard is a preponderance of evidence and substantial evidence on the record as a whole when evaluating a hearing officer's findings of fact. Section 120.57(1)(b)9, F.S. (1981).

Petitioners contend that the pressure declines experienced by the Aquarina wells during the pump tests demonstrated that the actual effects by Aquarina on other uses will be much greater than those modelled. However, a review of the record as a whole shows that when Aquarina attempted to introduce evidence of other uses besides South Brevard Utilities Corporation (SBUC) which could have impacted Aquarina's pressure levels, this was objected to by Petitioner's counsel and the hearing officer excluded the evidence. Petitioners appear now to be speculating as to what effects only SBUC's withdrawal had on Aquarina's pump test with no evidence including or excluding other possible withdrawals in the area at the time. Petitioners had their opportunity to present evidence on this point and did not choose to exercise it. There is no allegation that the hearing officer's findings of fact as to impact are not supported with competent substantial evidence and therefore we are hesitant to upset it.

Petitioners strongly take exception to any finding related to the effect of the plugging of mosquito control wells contending the wells are illegal and any water saved by their plugging should not be counted in the equation. However, plugging of the wells was a condition recommended by the District in its Technical

Staff Report (TSR) submitted August 20, 1981, and plugging of the wells would result in a net saving of approximately 432,000 GPD of water from the lens area. The proposed withdrawals are from wells cased to below the lens area, and the hearing officer determined that, based upon evidence submitted, whether or not the aquitard exists, there would not be a significant effect by Aquarina withdrawals on either the quality or quantity of water available to neighboring water users. This finding was made independently and not conditioned on the finding related to the mosquito well program and, in the absence of an allegation that it is not supported by substantial evidence on the record as a whole, we do not choose to overturn it.

Petitioner Wolf suggested that there may be alternative sources for Aquarina's water supply. However, an examination of the record as a whole reveals that Aquarina did put on testimony regarding alternatives and chose one which became the basis for their application and presented evidence in support of this alternative. The evidence regarding alternatives was un rebutted by any evidence presented by Petitioners. However, Aquarina's alternative was evaluated against criteria contained in statutes and rules, and findings of fact and conclusions of law were made by the hearing officer determining conformity with these criteria. Again, in the absence of an allegation or showing that a finding is not based upon substantial evidence on the record as a whole, we cannot disturb the findings of fact.

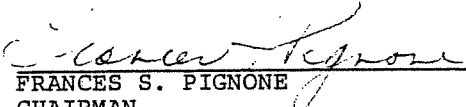
All other exceptions have been considered by the District but are rejected as being irrelevant or not sufficiently substantial to warrant consideration. It should be reiterated that no petitioner has claimed that any of the findings of fact were not supported by competent substantial evidence or that the proceedings did not comply with the essential requirements of law.

Accordingly, the District hereby adopts the hearing officer's Recommended Order and grants the permit with the recommended conditions in toto except that in the Recommended Order on page 9, the word "Florida" should be amended to add an "n" to the end

since it depicts the Floridan aquifer; the first "user" on page 12 should have the "r" deleted, as it was apparently a typographical error; the word "reasonably" also on page 12 should have the "y" changed to "e", since it was also apparently a typographical error; paragraph (k) on page 13, should change the word "or" to "on"; and §373.223(1)(a) on page 14 should be changed to reflect the proper cite, §373.223(1)(b). The second Recommended Order, Exhibit B, dismissing Petitioner Blaha is hereby adopted; and Petitioner Blaha is ORDERED AND ADJUDGED DISMISSED for lack of standing.

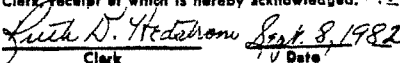
DONE and ORDERED this 7th day of September, 1982, in Palatka, Florida.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT


FRANCES S. PIGNONE
CHAIRMAN

ATTEST


LYNNE C. CAPEHART
SECRETARY

FILING AND ACKNOWLEDGMENT
FILED, on this date, pursuant to 120.52(9)
Florida Statutes, with the designated District
Clerk, receipt of which is hereby acknowledged.

Clerk Date Sept. 8, 1982

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FINAL ORDER was furnished by United States Mail this 8th day of September, 1982, to the following parties of record:

Honorable Sharyn L. Smith
Division of Administrative Hearings
Oakland Building
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Tallahassee, Florida 32301

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Mr. Ludwig Stoyke
470 Nikomas Way
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Mr. Lewis Hiester
3865 ALA Highway
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Ruth D. Hedstrom

RUTH D. HEDSTROM
DISTRICT CLERK

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. GEORGES BLAHA, et al.,)	
)	
Petitioners,)	
)	
vs.)	
)	CASE NO.: 81-2259
ST. JOHNS RIVER WATER MANAGEMENT)	
DISTRICT and AQUARINA DEVELOP-)	
MENTS, INC.,)	
)	
Respondents.)	
)	
)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Sharyn L. Smith, held a formal hearing in this case on March 2-5, 1982, in Melbourne, Florida. The following appearances were entered:

APPEARANCES

For Petitioners:

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For Respondent
St. Johns River
Water Management
District:

E. Lee Worsham, Esquire
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Palatka, Florida 32077

For Respondent
Aquarina Develop-
ments, Inc.:

Clifford A. Schulman, Esquire
GREENBERG TRAUERIG ASKEW HOFFMAN
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Miami, Florida 33131

The issue for determination in this formal administrative proceeding is whether the applicant, Aquarina Developments, Inc. (hereafter "Applicant" or "Aquarina") is entitled to a consumptive use permit authorizing 0.765 million gallons of water per day for five years, not to exceed 171 millions gallons per year, issued by the Respondent St. Johns River Water Management District (hereafter "Respondent" or "District") pursuant to Chapter 373, Florida Statutes, subject to any permit conditions deemed appropriate based upon the record compiled at the formal proceeding.

At the final hearing, Garald T. Parker, Daniel Spangler, Howard Wolf, Mr. Collins, Ludwig Stoyke, Georges Blaha and Lewis Ullian testified for the Petitioners. Both Mr. Parker and Dr. Spangler were qualified and testified as expert witnesses. Petitioner's Exhibits 1-7 were admitted into evidence. Edward H. Fleis, William A.J. Pitt, Gerald E. Seaburn and Bert Leitz testified for the Applicant. Messers. Fleis and Pitt and Dr. Seaburn were qualified and testified as expert witnesses. Aquarina Exhibits 1-46, 48 and 49 were offered into evidence as SJ-1 #1-46, 48 and 49.^{1/} All were admitted with the exception of Exhibits 22, 24, 25 and 26. Thomas Ziegler and Jim Frazee were qualified and testified as expert witnesses on behalf of the Respondent District. St. John's Exhibits 1-7 were offered and admitted into evidence as SJ 1-7.

Proposed Recommended Orders have been submitted by the Applicant and the District. To the extent that the parties findings of fact have not been included in the Recommended

^{1/}At the hearing, ruling was reserved on Aquarina Exhibit 47 which is hereby admitted.

Order, they are rejected as unsupported by the evidence and/or immaterial to the results reached. Additionally, specific posthearing memorandums were requested by the Hearing Officer and have also been considered in the preparation of this Recommended Order.^{2/}

PROCEDURAL BACKGROUND

On June 26, 1981, the Respondent Aquarina Developments, Inc., applied to the St. Johns River Water Management District for a consumptive use permit pursuant to Part II, Chapter 373, Florida Statutes, and Rule 40C-2, Florida Administrative Code, to withdraw ground water from the Floridian aquifer in Brevard County in excess of 100,000 gallons per day (gpd) to serve its proposed Planned Unit Development (PUD) through its own water supply system. The Applicant presently proposes to withdraw water from a well drilled to a depth of 595 feet and cased to a depth of 450 feet.

Following the District's completion of a technical staff report recommending the issuance of the requested permit, Petitioners filed objections to the application and sought a formal hearing pursuant to Section 120.57, Florida Statutes. The Governing Board of the District requested on September 9, 1981, that a Hearing Officer from the Division of Administrative Hearings conduct the formal proceedings. A hearing was originally scheduled for January 18-29, 1982, and the instant case no. 81-2259, was consolidated with other cases involving the Applicant. In December, 1981, Petitioners requested a continuance in order to permit recently retained counsel to prepare for hearing. The continuance was granted and the case was rescheduled and heard on March 2-5, 1982.

^{2/} The posthearing memorandums are hereby designated and made a part of the record as Hearing Officer Exhibits 1-10.

1. By application No. 2-7738 filed on June 29, 1981, Aquarina has requested a withdrawal for consumptive use of ground water in Brevard County in the amount of 468,000 gallons per day (850,000 gallons per day maximum) of raw water (before processing).

2. The purpose of the proposed consumptive water use is a proposed development of 196± acres in Brevard County located between Mullet Creek, a tributary of the Indian River and the Atlantic Ocean in South Brevard County. It is located on the barrier islands separated from the mainland by the Indian River, and is 13 miles south of Melbourne and 5 miles north of Indian River County. Aquarina proposes to develop a condominium community with a projected population of 3,400 persons consisting of 1,600 residences, a commercial area, and 500 hotel rooms. An on-site well field is proposed as well as reverse osmosis water treatment and wastewater treatment plants which are to be constructed near the southern boundary of the development. Two wells with a capacity of approximately 500 gallons per minute are proposed to be constructed and both will withdraw water from the Floridan Aquifer for conversion by reverse osmosis treatment into potable water.^{3/} In addition to potable water supply requirements for the development, although part of the requirement will be met by wastewater, there is a requirement for irrigation water for landscaping. The Aquarina site has been zoned Planned Unit Development (PUD) since 1973 and the proposed densities are in accordance with those established in the Brevard County Comprehensive Plan and Zoning Ordinance.

3. As a result of an earlier application of Aquarina for consumptive use, a temporary water use permit was granted by the District to allow Aquarina to drill test wells for aquifer testing before the present application for

^{3/} For purposes of this Order, the term "fresh or potable water" refers to water which has a chloride concentration of less than 250 parts per million.

water use would be considered by the District. This earlier application is not now at issue.

4. Pursuant to this temporary permit, Aquarina conducted an aquifer test program. During the first test, well #1 (the northernmost well) was utilized as a monitor or observation well for the test conducted on well #2, and an existing mosquito control well was also used as an observation well. A two-step pump test was run for 24 hours, with drawdown readings recorded at all three wells. The pump test analysis showed that the Floridan Aquifer transmissivity (the measure of the ability of the aquifer to transmit water) ranged from 173,000 gallons per day per foot at the observation wells to 87,000 gallons per day per foot at the discharge well. The total depth of these two wells was #1 -- 425 feet and #2 -- 412 feet, respectively, both cased to approximately 320 feet.

5. Following submission of the results of the first aquifer test and the application for consumptive use filed on June 29, 1981, the District staff prepared a Technical Staff Report (TSR) for the benefit of the District Governing Board based upon the two wells drilled pursuant to the temporary permit. However, because the proposed withdrawals would be from the Sebastian Inlet fresh water lens which is a finite potable source of water rapidly being depleted by existing domestic uses and mosquito control wells, the TSR recommended, among other things, that the two wells be deepened to a depth below the Sebastian Inlet fresh water lens and cased to a depth of 450 feet to insure that withdrawals occur from expected saltier water below the lens. Also, the District staff recommended that three mosquito control wells on the Aquarina property be properly plugged to eliminate fresh water loss from the lens due to the flowing

wells. The three flowing mosquito control wells on the site were estimated to have been flowing at 432,000 gallons per day.

6. The Sebastian Inlet fresh water lens from which Aquarina initially intended to withdraw its water appears as two underground bubbles or lenses of water fresher than the surrounding connate or saltier water. The lenses apparently are a result of stratigraphic entrapment of fresh water due to geological formations and are not being recharged with fresh water. When withdrawals are made from these lenses, salty or connate water fills the void left by the fresher water following withdrawal. The two lenses were substantially larger during recent times but, because of many domestic uses as well as mosquito control wells which have been flowing freely, the reservoirs have shrunk significantly. Based upon present usage, the north portion of the lens will last until approximately the year 2000 at current rates of consumption and the south portion of the lens will last until approximately the year 2030 at current rates of consumption.

7. Because of the impact on the Sebastian Inlet lens, the staff of the District could not recommend approval of Aquarina's application unless Aquarina agreed to three main conditions:

- (a) The Applicant would case its production wells to 450 feet below the surface, to avoid interference with the freshwater reservoir. (Because of the combined factors of upward artesian pressure in the aquifer, the greater density of salt water or connate water in relation to freshwater, and the known range of transmissivity and storage factors for that portion of the aquifer [an underground waterbearing stratum or group of strata] in that geographical area, connate water would flow upward and from the sides into the area of the Applicant's withdrawal of water from beneath the lens, and

the lighter, fresh water of the lens above would remain there, free from interference by the withdrawal.)

- (b) The Applicant would have to plug all the preexisting mosquito control wells on the development site.
- (c) The Applicant would have to undergo early monitoring of the chemical quality of this water and the water within the fresh water reservoir.

As a result of Aquarina's agreement to meet these three conditions, the Technical Staff Report (TSR) issued by the District on August 20, 1981, recommended approval of the application with the addition of the above conditions.

8. During the course of (1) deepening of well #2 to a depth of 650 feet and backplugging to 595 feet; (2) casing it to a depth of 450 feet; (3) performing a second aquifer test on the deeper well; and (4) evaluating the proposed withdrawals, Aquarina's consultants came to the following conclusions which were unrebutted by other evidence submitted at the final hearing:

- (a) During the process of deepening well #2 to 650 feet, later backplugged to 595 feet, the consultants discovered an aquitard or confining layer made up of small clay-sized particles which retard the vertical flow of water at a depth of 440 to 450 feet. This well was cased to a depth of 450 feet or to the top of the aquitard. Before reaching this layer, the quality of water was generally declining with increasing depths. Below this layer, the quality of water improved to a depth of approximately 550 feet and the transmissivity was greater below the aquitard than above. Further, that same aquitard was also discovered in a mosquito control well on site when it was logged.
- (b) Sufficient quantities of treatable water are available from the deepened well to supply the needs of the

Aquarina project.

- (c) That in both the June, 1981, and the subsequent aquifer test, there appeared to be interferences from other sources which impact the potentiometric pressure levels of the wells on the Aquarina site. These were identified as the South Brevard Utilities Corporation (SBUC) and nearby domestic well users.
- (d) That the results of the June, 1981, test and computer modeling were that the impact of the proposed Aquarina withdrawals on existing nearby wells drilled to the shallower level was between a one to two foot decline in the potentiometric pressure. The average potentiometric pressure in the local aquifer is 27 feet above National Vertical Geodetic Datum (NVGD) or Mean Sea Level (MSL). These existing nearby wells were identified to be the SBUC well approximately 2,400 feet away from Aquarina and those wells of nearby homeowners in the same vicinity as the SBUC well.
- (e) That flownet analysis (EPA computer model) of the results of the second aquifer test program revealed that approximately 6% of the water obtained from the deepened well would come from the layers above the aquitard, i.e. connate water and the Sebastian Inlet fresh water lens. Based on this model, the effect on water quality for existing users of the proposed withdrawals was concluded to be insignificant and known existing users would not be harmed by the proposed withdrawals.
- (f) The aquitard was observed in the Aquarina deepened well and the observation mosquito control well which was

logged. It was impossible to state definitely that the observed aquitard in the area was a continuous geologic feature. Partly due to the proximity of the aquitard and the depth of the wells in relation to the Sebastian Inlet fresh water lens, the conclusion was reached that effect on water quality of the Aquarina withdrawals would be insignificant.

- (g) There is no fresh water recharge into the Sebastian Inlet fresh water lens, but there is a continuous pressure connection throughout the Florida aquifer in the area. Any replacement of water discharged from the Sebastian Inlet fresh water lens or the lower zones will be of saltier, less potable connate water.
- (h) It is not understood how long the part of the aquifer below the aquitard (lower zone) will continue to be a significant source of fresh water due to insufficient data.
- (i) The three mosquito control wells on the Aquarina site are flowing when uncapped or unplugged an estimated 432,000 gallons per day while the wells in the northern sector of the Sebastian Inlet fresh water lens (below where Aquarina is located) flowed at an approximate rate of 2.6 MGD. These withdrawals by the mosquito control wells are primarily from the Sebastian Inlet fresh water lens and are the major cause of premature depletion of the lens.

9. The testimony and the data presented at the hearing demonstrate that the Applicant has met its burden to show by a preponderance of the evidence that the proposed withdrawals by Aquarina will not significantly affect either the

quality or quantity of water available to neighboring water users. This appears to be the case regardless of whether the aquitard testified to be about ten feet thick exists and whether the leakance value of less than 6% exists in the aquifer between the point of the Aquarina withdrawals and neighboring users. Data which may be generated subsequently may lead to a different conclusion, but this finding is based on the data presented to the Hearing Officer by the parties at the hearing.^{4/}

10. Aquarina has agreed to the following permit condition:
 - (b) The Applicant would have to plug all the preexisting mosquito control wells on the development site.

The proper plugging of the mosquito control wells on the Aquarina site will save approximately 432,000 GPD of water from the finite Sebastian Inlet lens. This condition was agreed to independently of the contribution by Aquarina of \$25,000 to the well plugging program with the District and Brevard County which has as its goal, the plugging of all mosquito control wells in the area. Without the plugging of the mosquito control wells, it is estimated that the northern reservoir of the lens would be depleted by the year 2000, and the southern reservoir by the year 2030. It was also estimated that the plugging of the mosquito control wells would prolong the life of the fresh water reservoirs by over 100 years. Furthermore, by plugging all the mosquito control wells, approximately 6,700,000 gallons per day will be saved from

^{4/} For example, Hearing Officer Exhibits 1-4 are post-hearing memorandums written by experts qualified as such at the formal hearing concerning the rise in water levels observed during the May and December, 1981, flow tests. This issue was not fully developed at the final hearing and the posthearing memorandums have not adequately explained the rise in water levels attributed to a source separated from the Applicant's wells by a solid horizontal aquitard. However, this alone is insufficient to overcome the initial burden of proof which was met by the Applicant and the District at the final hearing. See Florida Department of Transportation v. J.W.C. Co., 396 So.2d 778 (Fla. 1st DCA 1981). Accordingly, based upon the record of the final hearing, the burden of proof on this issue never reshifted to the Respondents.

the entire lens area.

11. The basin in which Aquarina is located is in an overdraft condition with more water withdrawn than is presently being recharged. However, the Aquarina project will bring about a net improvement in the situation due to the mosquito control well plugging program imposed as a condition of the permit.

12. Under the sites current PUD zoning, a density of 12 dwelling units per acre is permitted. The current classification of the property in the Brevard County Comprehensive Plan is "urbanizing." Under that classification, the Applicant could seek a rezoning of the property from PUD to single family attached residential. Such a reclassification would avoid the requirements of Chapter 373, Florida Statutes, by allowing each of the 196+ dwelling units to have its own well with a per unit consumptive use below the quantity required to activate Chapter 373, Florida Statutes. Nothing would prevent any of the residential wells from tapping the fresh water lens presently used by the Petitioners in a total amount exceeding that sought in the instant application. Given the designated land use of the Aquarina site, the controlled withdrawal from one or two points within the development is a preferable alternative to the unregulated development and water use which in all probability would follow from the denial of this permit. In large measure, the District's options regarding this site and its attendant consequences have been predetermined by land use decisions made by local officials. Under these circumstances, the District has been required to choose among a set of options which do not include an option for controlled and limited growth directly tied to availability of fresh water resources

envisioned by the Petitioners. The choice which the District made in this case, although obviously not ideal, is the best among the presently available alternatives.

CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. See Section 120.57(1), Florida Statutes.

Pursuant to Section 373.223(1), Florida Statutes, an applicant for a consumptive water use permit must establish that the proposed use of water: (1) is a reasonable beneficial use as defined at Section 373.019(5), Florida Statutes; (2) will not interfere with any presently existing legal user of water; and (3) is consistent with the public interest.

The Department of Environmental Regulation has promulgated the following rules at Chapter 17-40.04, Florida Administrative Code, which can be utilized to determine whether a proposed use is reasonably beneficial:

(2) In determining whether a water use is a reasonable-beneficial use, consideration should be given to any evidence presented concerning the following factors:

(a) The quantity of water requested for the use;

(b) The demonstrated need for the use;

(c) The suitability of the use to the source of water;

(d) The purpose and value of the use;

(e) The extent and amount of harm caused;

(f) The practicality of mitigating any harm by adjusting the quantity or method of use;

(g) Whether the impact of the withdrawal extends to land not owned or legally controlled by the user;

- (h) The method and efficiency of use;
- (i) Water conservation measures taken or available to be taken;
- (j) The practicality of reuse, or the use of waters of more suitable quality;
- (k) The present and projected demand or the source of water;
- (l) The long term yield available from the source of water;
- (m) The extent of water quality degradation caused;
- (n) Whether the proposed use would cause or contribute to flood damage;...
- (o) Whether the proposed use would significantly induce salt water intrusion[;]
- (p) The amount of water which can be withdrawn without causing harm to the resource[;] and
- (q) Other relevant factors.

Aquarina, who as the Applicant to this proceeding bears the ultimate burden of proof of entitlement to the requested permit, must establish that its proposed use of water is a reasonable beneficial use as defined at Section 373.019(4), Florida Statutes, as follows:

...the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and manner which is both reasonable and consistent with the public interest.

The Respondents have established by a preponderance of the evidence that the Applicant will use the requested water both economically and efficiently. The conservation measures incorporated as permit conditions and agreed to by the Applicant demonstrate an intent to conserve and efficiently limit domestic water use by Aquarina residents. Further, the purpose of the proposed withdrawal is reasonable and

consistent with the designated intensive use of the site as determined and established by local government officials through zoning and land use decisions.

The documents and testimony introduced at the final hearing by the Respondents demonstrate that the withdrawals proposed by the Applicant will not be significant with respect to neighboring water users. The minimal effect upon existing users as demonstrated by the Applicant is sufficient to prove by a preponderance of the evidence that the proposed use of water will not interfere with any presently existing legal users of the water supply. See Section 373.223(1)(b), Florida Statutes. Based upon the evidence submitted at the final hearing by the Respondents, a minimal amount of water can be expected to be withdrawn from the Sebastian Inlet fresh water lens by the Applicant's proposed use. Accordingly, the Respondents have shown that the rights of existing users to withdraw water from the lens will not be interfered with within the meaning of Section 373.223(1)(a), Florida Statutes. The granting of the permit subject to the conditions specified, infra, will have a net beneficial effect on total withdrawals from the fresh water lens, thereby, slowing the depletion rate of the lens and benefiting all existing users.

Finally, the Applicant has established that its proposed use of water is consistent with the public interest pursuant to Section 373.223(1)(c), Florida Statutes, and the use is for a purpose and in a manner "which is both reasonable and consistent with the public interest". See Section 373.019(4), Florida Statutes. Issuing the instant permit would enable the Applicant to efficiently utilize a water resource in conformity with the legally authorized and presumptively appropriate use of the subject site.

RECOMMENDATION

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


RECOMMENDED:

That the Respondent St. Johns River Water
Management District grant the requested consumptive water
use permit to the Applicant Aquarina Developments, Inc.,
subject to the conditions contained in the staff's TSR, as
corrected and amended on March 25, 1982, which include, but
are not limited to:

1. The maximum daily withdrawal shall not exceed 0.765 million gallons per day for five years.
2. The maximum annual withdrawal shall not exceed 171 million gallons for five years.
3. The existing ten inch public supply wells shall be lined or cased to a depth of 450 feet below land surface to insure withdrawals from below this depth. The construction standards used to perform these well modifications shall be accomplished through all appropriate permitting regulations and conform to existing construction standards as stated in Chapter 373, Florida Statutes (F.S.) and Chapter 40C-3, Florida Administrative Code (F.A.C.).
4. That any subsequent Public Supply well or wells constructed for this project be cased to an equal depth.
5. That all mosquito control wells (3) within the property boundaries of the permittee be plugged with neat cement grout from bottom to top as specified in Chapter 40C-3, F.A.C.
6. Chloride concentrations and dissolved solids in water samples from each water supply well shall be measured monthly, and results shall be submitted within 60 days of measurement to the St. Johns River Water Management District. A complete water quality analysis including Ca, Mg, Na, K, Cl, SO₄, HCO₃, pH and CO₃ shall be performed on samples collected in May of each year.
7. The permittee shall maintain withdrawal records showing daily withdrawals of raw (pre-treatment) water for each year ending May 31. These records shall be submitted on a quarterly basis on District Form En-3.

8. Nothing in this permit shall be construed to limit the authority of the St. Johns River Water Management District to declare a water shortage and issue orders pursuant to Section 373.175, Florida Statutes, or formulate a plan for implementation during periods of water shortage pursuant to Section 373.246, Florida Statutes.
9. District representatives may visit the site to insure compliance with conditions of this permit following advance notification of the permittee of the time of visit.
10. The water conserving techniques and methods as outlined in the July 30, 1981 letter to the District from Ed Fleis, P.E., to Thomas K. Ziegler, TSR Exhibit 10, shall be implemented and included throughout all phases of this project. Further, should the replacement of any fixtures or appliances be required during the life of this permit, water conserving fixtures equivalent to those originally specified shall be installed.

DONE and ORDERED this 6th day of August, 1982,
in Tallahassee, Florida.



SHARYN L. SMITH
Hearing Officer

Department of Administration
Division of Administrative Hearings
Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301
(904)488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of August, 1982.

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DIVISION OF ADMINISTRATIVE HEARINGS

12 AUG 82 10: 25

DR. GEORGES BLAHA, et al.,)	
)	
Petitioners,)	
)	
v.)	
)	
ST. JOHNS RIVER WATER MANAGEMENT)	CASE NO.: 81-2259
DISTRICT and AQUARINA DEVELOP-)	
MENTS, INC.,)	
)	
Respondents.)	

ORDER

During the final hearing involving Case No. 81-2259, counsel for Respondent Aquarina moved to dismiss the Petitioner Georges Blaha for a lack of standing due to Blaha residing outside the area of the involved fresh water lens and having a well which is three hundred and fifty feet deep which would not be affected by the Aquarina withdrawals. At the hearing, the undersigned reserved ruling on the motion.

Having reviewed the transcript and exhibits and considered argument of counsel, the Respondent Aquarina's Motion To Dismiss the Petitioner Georges Blaha from Case No. 81-2259 is hereby granted since Blaha has neither shown that his substantial interests will be affected by the granting of the consumptive use permit, section 120.57(1), Florida Statutes, nor alleged standing pursuant to section 403.412(5), Florida Statutes.

DONE and ORDERED this 6th day of August, 1982, in Tallahassee, Florida.

Sharyn L. Smith
 SHARYN L. SMITH
 Hearing Officer
 Division of Administrative Hearings
 2009 Apalachee Parkway
 Tallahassee, Florida 32301
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