

2. The property is located on Wekiva Park Drive north of State Road 46 in Seminole County and lies between the Wekiva River to the west and the Lower Wekiva State Reserve to the east. Adjacent properties to the north and south contain residences constructed prior to implementation of District permitting requirements for such construction. The property has a steep slope ranging from 29 feet NGVD along the roadway down to elevation 6 feet NGVD at the river's edge. The upland areas of the property have a high water table at or near the ground surface which, combined with the steep slope, results in a seepage slope environment characteristic of much of the land adjacent to the Wekiva River.

3. The property contains 3.0 acres of forested uplands and 4.0 acres of forested wetlands located within the Riparian Habitat Protection Zone (RHPZ) of the Wekiva River Hydrologic Basin designated by District rules 40C-4.041(2)(b)9. and 40C-41.063(3)(e), Fla. Admin. Code. The remaining 0.6 acres of forested uplands on the property lie outside of the RHPZ.

4. The forested upland canopy of the property consists of various oaks, pines and southern magnolia with an understory predominantly comprised of palmetto and juvenile oaks, wiregrass, leaf litter and bracken fern. The forested wetlands contain a diverse plant community. The canopy includes ironwood, sweet bay, gum, loblolly bay, cypress, cabbage palm, swamp laurel oak, and ash. The understory primarily contains juveniles of the canopy species, as well as various ferns, duck potato and fetterbush.

5. Womack's property provides habitat and food sources for a variety of wildlife species. The property is available as a corridor for a variety of wildlife, including the threatened black bear, to move between unimproved tracts within the property's vicinity.

6. Womack's proposed system includes the construction of a house and driveway on each lot within the uplands. At least 0.9 acres will be cleared for the residences within the RHPZ, with the house pads accounting for approximately 0.43 acres of that area. Additionally, the applicant proposes a "natural path" from each residence through the upland and wetland portions of the RHPZ to a proposed "swimming-boating area."

7. Womack's proposed project will displace wildlife habitat and cause adverse effects to fish and wildlife, including aquatic and wetland dependent species. Womack did not propose any mitigation to offset the adverse impacts on the wildlife functions provided by the uplands and wetlands in the RHPZ.

8. The District suggested several alternative approaches to Womack to reduce the impacts of the proposed project to such an extent that the fish and wildlife RHPZ impacts could be eliminated or sufficiently reduced with appropriate mitigation to be permitted under District rules, provided Womack's proposed plan also complied with the relevant water quantity and water quality criteria. A possible design approach offered by the District involved a relocation of the proposed residences within the property that would not require clearing or filling within the RHPZ. This

alternative approach would obviate Womack's need to obtain a District MSSW permit for the proposed project, except for a stormwater management permit under Chapter 40C-42, Fla. Admin. Code, and consequently Womack would not have to address the habitat impacts to the uplands and wetlands in the RHPZ found under the current application. Another alternative approach suggested by the District concerned reducing impacts to the RHPZ by a combination of reducing developed acreage on each lot, moving the proposed residences closer to the northeastern portion of the property where the widest swath of the uplands outside the RHPZ is located and proposing appropriate mitigation to offset adverse impacts. Womack did not contest the viability of the alternative approaches to achieving a permittable project from the District, but declined to accept the suggested alternative approaches because he contended the residences would be too close to the road and, in his view, would be incompatible with neighborhood characteristics.

9. Womack's plan will involve the placement of impervious surfaces for the three house pads that average 6,300 square feet each and for the driveways to each residence. These impervious surfaces will reduce the infiltration of rainfall into the upland soils and will increase the rate, velocity and total volume of stormwater runoff flowing directly into the wetlands and the Wekiva River. Additionally, the natural subsurface seepage and surface sheetflow patterns will be interrupted and some channelization of surface flows is expected. These increased flows

and volumes to the Wekiva River would contribute to an increase in flood levels. Increased flow velocities would contribute to erosion, turbid discharges and sedimentation in the Wekiva River's downstream areas. Womack's application proposes that the existing wetlands adjacent to the Wekiva River will serve, in their natural condition, to store and attenuate these increased flows; the application contains no proposal for the construction of a system to serve these functions. Womack provided no details to reasonably establish that the wetlands can provide such functions. The wetlands are within the 10-year floodplain of the Wekiva River and would therefore already be inundated during a 25-year storm event. Womack did not provide any calculations addressing the pre- and post-development runoff rates and volumes, the required detention storage, or the available detention storage.

10. The Wekiva River and adjacent wetlands are Outstanding Florida Waters (OFW). Womack proposes to directly discharge stormwater runoff from the project into the wetlands adjacent to the Wekiva River. The applicant proposes that these wetlands on the property will serve to provide stormwater treatment, although the wetlands themselves are waters of the state and part of the OFW. The applicant has not provided any information that water quality standards will be met and that ambient water quality in the OFW will not be lowered. Furthermore, Womack has not provided any information that the proposed treatment meets the stormwater management design and performance criteria ensuring that state water quality standards are met.

11. Womack's proposed project is located in the Water Quality Protection Zone designated in District rule 40C-41.063(3)(c), Fla. Admin. Code. The water quality in the river is particularly sensitive to land clearing and earthwork activities in this zone. Due to the steep slope, erosive soils and high water table, the construction of Womack's proposed project will be difficult to stabilize. To address requisite turbidity and sediment control, Womack provided only a note on the plans indicating that a turbidity screen and hay bales will be used for such control. The applicant's proposed control measures are inadequate to ensure that the proposed construction in the zone will not result in discharges that violate turbidity standards in the OFW and will not deposit sediment in the wetlands.

12. Womack can ameliorate the adverse water quantity and water quality impacts of the proposed project by providing an improved, detailed erosion and sediment control plan and appropriate onsite retention and detention for treatment and attenuation of stormwater runoff from the developed portions of the lots. The construction and maintenance of shallow vegetative swales would be one appropriate alternative for providing the necessary retention and detention of stormwater runoff from the developed portions of the property, rather than the proposed discharge of excess runoff directly into the downslope areas.

13. The District provided Womack a notice of intent to deny his application 4-117-0285A by certified letter dated July 21, 1992. Also, a notice of intent to deny the application was

provided by publication in the Sanford Herald on July 22, 1992. Both notices advised recipients that a petition to seek a section 120.57, Fla. Stat., administrative hearing on the intended District decision must be filed within 14 days of receipt of the notice and advised recipients of the applicable District rules to seek a hearing. Womack did not file a petition for an administrative hearing with the District.

CONCLUSIONS OF LAW

14. The District has jurisdiction over Womack's proposed project. Section 373.069(2)(c), Fla. Stat.; Chapters 40C-4 and 40C-41, Fla. Admin. Code.

15. Womack has waived his right to seek a section 120.57, Fla. Stat., administrative hearing by failure to timely file a petition pursuant to the notice of rights. Rule 40C-1.511(2), Fla. Admin. Code; City of LaBelle v. Bio-Med Services, Inc., 598 So.2d 207 (Fla. 2d DCA 1992).

16. To obtain an MSSW permit from the District, it is Womack's burden to provide reasonable assurance that the proposed system will comply with all conditions for issuance of the permit. Rules 40C-4.301(1)(a), 40C-4.301(2)(a), 40C-41.043(1), 40C-41.063(3)(c), 40C-41.063(3)(d), 40C-41.063(3)(e), 40C-42.025 (1986), and 40C-42.027 (1986), Fla. Admin. Code.

17. Despite alternative approaches offered by the District and rejected by Womack to reduce and mitigate the adverse fish and

wildlife impacts of the proposed project, Womack has failed to provide reasonable assurances that the construction of his proposed system within the RHPZ of the Wekiva River Hydrologic Basin will not adversely affect the functions provided to aquatic and wetland dependent species by the RHPZ. Likewise, Womack has failed to provide reasonable assurances that the construction and operation of the proposed system will not adversely affect the functions provided to fish and wildlife by the wetlands adjacent to the Wekiva River. Consequently, the project does not comply with rules 40C-4.301(1)(a)10., 40C-4.301(2)(a)7., and 40C-41.063(3)(e), Fla. Admin. Code.

18. To prevent or diminish downstream flooding, erosion, turbid discharges and sedimentation, District rules establish a regulatory criterion that a proposed system be designed to detain runoff to ensure that the peak discharge rate for the 25-year, 24-hour storm in the post-development condition is no greater than in the pre-development condition. Womack proposes that the existing wetlands adjacent to the Wekiva River naturally serve such functions, however the wetlands are within the 10-year floodplain of the river and would already be inundated during a 25-year storm event and thus the wetlands could offer no water quantity or water quality control function in such a storm event. Moreover, Womack offered no information that the existing wetlands could store and attenuate the increased runoff and provide treatment to preclude adverse water quantity impacts and ensure compliance with state water quality standards for direct discharges to an OFW.

Accordingly, Womack has failed to provide reasonable assurances that the proposed project complies with rules 40C-4.301(1)(a)9., 40C-4.301(2)(a)1., 40C-4.301(2)(a)6., 40C-4.301(2)(b), 40C-42.025 (1986), 40C-42.025(10) (1986), 40C-42.027 (1986), and 17-4.242(2), Fla. Admin. Code.

19. Womack's proposed project lies within the Water Quality Protection Zone established by District rules. In this zone, District rules require detailed erosion and sediment control plans to ensure protection of the water quality of the Wekiva River. Womack has failed to provide reasonable assurance that the proposed project complies with rule 40C-41.063(3)(c), Fla. Admin. Code.

20. Despite alternative approaches offered by the District to rectify the water quantity and water quality impacts of the proposed project, the application and plans submitted by Womack fail to provide the requisite reasonable assurances that the proposed project system will not harm the water resources of the Wekiva River and will not be inconsistent with the objectives of the District as implemented in Chapters 40C-4 and 40C-41, Fla. Admin. Code.

WHEREFORE, upon consideration, it is ORDERED that the MSSW Application No. 4-117-0285A of Floyd R. Womack is DENIED.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: Joe E. Hill
JOE E. HILL
CHAIRMAN

RENDERED this 10th day of November 1992, in Palatka,
Florida.

BY: Patricia C. Schultz
~~PATRICIA C. SCHULTZ~~
ASST DISTRICT CLERK