

**CITY OF ORLANDO
QUASI-JUDICIAL APPEAL**

WANDA JONES,

Petitioner,

v.

**CITY OF ORLANDO, FLORIDA,
a Florida municipal corporation,**

Respondent,

and

JIM HALL,

Applicant/Respondent

**Case No. QJ2015-005
Lower Case Nos. ZON2015-00021
MPL2015-00020**

**PETITIONER'S STATEMENT OF OPPOSITION TO THE RECOMMENDED
ORDER**

I, Wanda Jones, respectfully object to the recommended order on the following grounds:

- 1) The order states that Dr. Wanda Jones, the Petitioner, was accepted as an expert in wetlands identification but on as an expert on the issue of the impact of the Project on wetlands located on the Subject Property. Dr. Jones explained that she has a Ph.D. in Wildlife Ecology and Conservation from a Florida university. By the time a person graduates with a doctorate in Ecology and Conservation in Florida, they have been trained and groomed to be an expert in the ecology of ecosystems around the world, including wetlands. Ecologists are frequently used in court cases to be an expert on the exact issue that is this case. Dr. Jones' expertise as a trained scientist and experiences and long term observations of the Property as a long time resident of the area is more than sufficient to speak to the fact that this development would negatively impact this property.
- 2) The construction of the proposed Project on this property which is entirely comprised of critical wetlands important to the Wekiva River is prohibited by several federal and state laws due to the wetland status and its status as protected wildlife species habitat.

- 3) No exhibits or other solid evidence was submitted by the Applicant confirming the Army Corps of Engineers agreed to the SJRWMD wetland line or that they worked with the Fish and Wildlife Agency in accordance with federal law. According to that agency's own definition of wetlands, all of this property is a wetland and thus is protected under the Clean Water Act and the Clean Water Rule.

Low Quality Wetlands: Wetlands do not exist as high or low quality wetlands...they are either wetlands or they are not wetlands. Delineation of high or low in wetland quality does not exist according to the definition of the U.S. Army Corp of Engineers. Evidence is clear in pictures included in the environmental assessment and in the picture included below taken while standing just next to W.D. Judge Rd that the entire property is a wetland. The so called uplands aren't uplands at all. They are the driest part of the wetland but during the rainy season, it is evident that they are functioning as wetlands. The picture below shows wetland plant species growing on the edge of the property, indicating that the entire property is a wetland.



Wetland Protection

Based on the federal regulations and relevant case law, and under Title 33, chap. 26, Subchapter 5, sec 1362 of the Clean Water Act [33 U.S.C. 1362], Fairvilla Canal which runs through this property is a traditional navigable waterway and as such the Canal and the wetlands adjacent to it are protected under federal law by the Clean Water Act. These wetlands are protected under this law because they directly abut relatively permanent waters and they are adjacent to a jurisdictional tributary to a traditional navigable water. Fairvilla Canal is a tributary of Lake Lawne which is the head water of the Little Wekiva River which is a tributary of the Wekiva River [Final Report on Little Wekiva River Water shed Management Plan Nov. 2005 http://www.orange.wateratlas.usf.edu/upload/documents/Basinreport_LittleWekiva_ExecSumm.pdf]. Thus, Fairvilla Canal is a tributary to a traditional navigable waterway and as such, it and the wetlands surrounding it is protected from the effects of development by the Clean Water Act.

Under chapter 5A section 662a of the Clean Water Act, consultation with other federal agencies is required when an entity wants to alter the flow of navigable waters in anyway.

§ 662. Impounding, diverting, or controlling of waters (a) Consultations between agencies except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.

According to the testimony given by the Applicant's witnesses, they will have to bring in material to raise the ground, inherently destroying the wetlands which encompass all of the property, not just part of the property. In doing so, they will alter the Fairvilla canal and destroy critical wildlife habitat, including the habitat of endangered species. This type of activity is regulated by the abovementioned section and no evidence has been presented that the Applicant has consulted with other Federal agencies in regard to conservation of wildlife resources and development and improvement of water-resource development. In fact, it is the opposite in that they would negatively impact the hydrology of the Little Wekiva and Wekiva Rivers and polluting them in addition, in violation of the Clean Water Act.

According to the River and Harbor and Flood Control Act Public Law 91-611 SEC. 122:

Not later than July 1, 1972, the Secretary of the Army, acting through the Chief of Engineers, , after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than ninety days after submission, promulgate guidelines report to Congress, designed to assure that possible adverse economic, social and environmental effects relating to any proposed project have been fully considered in developing such project, and that the final decisions on the project are made in the best over all public interest, taking into consideration the need for flood control, navigation and associated purposes, and the cost of eliminating or minimizing such adverse affects and the following: (1) Air, noise, and water pollution; (2) destruction or disruption of man-made and natural resources, esthetic values, community cohesion and the availability of public facilities and services; (3) adverse employment effects and tax and property value losses; (4) injurious displacement of people, businesses, and farms; and (5) disruption of desirable community and regional growth. Such guidelines shall apply to all projects authorized in this Act and proposed projects after the issuance of such guidelines.

Evidence of the Applicant's compliance with this Act was not presented. It is the petitioner's argument that the majority of the 5 points indicated in the section of the act will be the negative impact I and other members of my community will experience. Evidence that this document has been produced has not come forth.

- 4) Dr. Jones expertly explained that wildlife habitat includes land used for foraging in addition to nesting. The wildlife species that she named require habitat range sizes from 1000 feet to 5 miles in order to meet their foraging needs. Additionally, the environmental assessment was conducted in a very short window in terms of season and in terms of number of actual hours spent each day conducting observations. I content the environmental assessment was inadequate and conducted in such a manner that it would be difficult for the assessor to accurately determine the presence of the wildlife species named in the hearing. Long term observations, such as the observations I've been making my entire life about the wildlife living on and around this property, and long term studies would confirm the information that Dr. Jones presented during the hearing. Importantly, the environmental assessor was hired by the applicant and therefore introduced bias the second he accepted the job. He was paid by the Applicant to do an assessment and thus it would benefit him to look for only what the developer would want him to see. A third party that was neutral should have been hired to do that job.

- 5) The traffic studies conducted on the property were not done in this area directly and were not done in areas that had similar conditions of truck traffic, residential traffic, environmental factors, and with a project like this one. Due to these discrepancies, I contend those studies cannot be accurately used to determine the impact this development will have on THIS community and, accordingly, the Applicant has not sufficiently completed the requirement for a Traffic Study. Additionally, no study was done to determine how the vibration of the trucks on the ground would affect these particular houses and their foundation. The presence of the trucks will introduce increased stress on these foundations and these houses were not built to withstand these types of vibrations.
- 6) In regards to environmental justice issues, environmental justice is just as legitimate an environmental issue as is the wetland issue. With all respect, it would seem if the hearing officer is able to rule on this case based on information presented about the wetlands, it would seem that that officer should also be able to identify how this proposed project introduces air pollution and water pollution, classic environmental issues, within a residential neighborhood.
- 7) As Dr. Jones, stated the Center for Disease Control has officially designated diesel exhaust fume as a carcinogenic substance(<http://www.cdc.gov/niosh/docs/88-116/>) increasing the risk of cancer, cardiovascular disease, respiratory illness, and genetic deregulation and mutation to all people exposed to it. Additional scientific studies conducted have confirmed this finding and they are available with minimal search on the internet.
- 8) The justification in the recommended order that the development is following all city codes is biased by the fact that the city codes strongly favor developers instead of the citizens that elected the officials that manage the content of the city code. The lighting, noise pollution, and traffic that will be generated by this Project will be overwhelming for a residential area and this Project does not belong in a residential area. If this Project were beneficial to residential areas, the pattern of development in Orlando reflects that this Project would, in that case, have been placed, in a more affluent, less urban neighborhood.
- 9) If this Project would have a positive influence on property values, it would have been placed in a more affluent neighborhood. Analysis of location of developments that raise property values in Orlando shows that those types of developments are placed in affluent neighborhoods and those that decrease property values are placed in less affluent neighborhoods.
- 10) The question "Would you want this in your neighborhood?" was asked in the hearing to the Applicant's team and the question received no response.

I, Wanda Jones, certify that I did file this opposition to the recommended order on July 14th, 2016.

Wanda Jones