

City of West Palm Beach v. Palm Beach Cnty., No. 4D17-1412, 2018 WL 3769192
(Fla. 4th DCA Aug. 8, 2018)

**Adversaries of an Amended Environmental Resource Permit Application Received
Continuance to Properly Consider Added Materials**

In *City of West Palm Beach v. Palm Beach Cnty.*, the City of West Palm Beach (the “City”) challenged South Florida Water Management District’s notice of intent to issue an environmental resource permit (ERP) to the Florida Department of Transportation for a road extension project and related surface water management system. The City argued that the ERP would have adverse impacts on Grassy Waters Preserve, a nature preserve owned by the City.

The City filed its petition challenging the ERP because Palm Beach County failed to “provide reasonable assurances that the project would not: 1) adversely impact water quality, fish, or wildlife; 2) cause secondary or cumulative impacts; or 3) fail the public interest test.” Before the final hearing, the Florida Department of Transportation and Palm Beach County amended their application to address these concerns, including new construction plans, a redesigned storm water management system, and a series of nutrient and cumulative impact assessments. The City moved to push back the hearing so its expert could analyze the amended application, but this motion was denied.

The administrative law judge concluded that the application met all permitting criteria and that the evidence did not show any adverse impacts for Grassy Waters Preserve. On appeal, the City argued that its due process rights were violated because the City was prevented from fully addressing the amended permit application since their continuance was denied and that the amended application showed a material flaw in the water quality findings.

In their opinion, the court reasoned that because the subject matter is very specific and technical, and because the permit involves significant future impacts to the environmental and public water supply, the City should have the opportunity to fully address the amended application. Furthermore, a continuance to allow the City to prepare for the amended application would not have adversely affected Palm Beach County or the Florida Department of Transportation. The Fourth DCA reversed the administrative law judge’s decision and ordered a new hearing so the City has time to review the amended application.