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State of Florida Division of Administrative Hearings: Second Motion to Dismiss

Clare E. Gray

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TERESA BURKITT,)	
)	
Petitioner,)	
)	
v.)	DOAH CASE NO. 90-003232
)	
ST. JOHNS RIVER WATER)	SJRWMD FILE OF RECORD
MANAGEMENT DISTRICT and)	NO. 90-916A
UNIVERSITY OF NORTH FLORIDA,)	
)	
Respondents.)	
_____)	
CATHLENE DENNY,)	
)	
Petitioner,)	
)	
v.)	DOAH CASE NO. 90-003233
)	
ST. JOHNS RIVER WATER)	SJRWMD FILE OF RECORD
MANAGEMENT DISTRICT and)	NO. 90-916B
UNIVERSITY OF NORTH FLORIDA,)	
)	
Respondents.)	
_____)	
MICHAEL W. WOODWARD,)	
)	
Petitioner,)	
)	
v.)	DOAH CASE NO. 90-003234
)	
ST. JOHNS RIVER WATER)	SJRWMD FILE OF RECORD
MANAGEMENT DISTRICT and)	NO. 90-916C
UNIVERSITY OF NORTH FLORIDA,)	
)	
Respondents.)	
_____)	

MOTION TO DISMISS

COMES NOW the Respondent, St. Johns River Water Management District ("District"), pursuant to Rules 22I-6.016 and 28-5.205, Florida Administrative Code (F.A.C.), and Fla.R.Civ.P. 1.140, and

moves to dismiss the amended petition. As grounds therefor, the District states:

1. The proposed agency action under review is the District's intent to issue a Management and Storage of Surface Waters (MSSW) permit for a system to serve roadway improvements proposed to be constructed by Respondent, University of North Florida, on a parcel which it owns in Duval County.

2. The District is authorized to either grant or deny MSSW permits pursuant to Chapter 373, Part IV, Florida Statutes (F.S.), Chapter 40C-4, F.A.C., and the MSSW Applicant's Handbook incorporated therein by reference.

3. Petitioner is authorized to seek administrative review of proposed agency action pursuant to Section 120.57, F.S., if it is a person substantially affected by such action.

4. Petitioner's initial petition was dismissed by the Governing Board of the District with leave to amend on May 9, 1990. Grounds for dismissal were that the Petitioner had not alleged specific facts which supported a finding that it would be substantially affected by the proposed action.

5. The amended petitions filed herein do not cure the original defects. Although Petitioners state that the project as proposed will affect their interests as university students, "Florida residents and taxpayers," and members of unincorporated environmental organizations, those are not the kinds of interests which confer standing pursuant to Section 120.57, F.S.

6. Section 120.57, F.S., standing is limited to those persons whose substantial interests are being determined by the

agency. In the instant case, the Petitioners have not alleged that they are adjacent property owners. They have failed to allege how they will be adversely affected by the District's decision to grant the permit authorizing widening of the road in a manner that brings them within the ambit of Section 120.57, F.S., standing.

7. Under Chapter 120, F.S., a party is defined as follows:

(12) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

(13) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).


8. To qualify as a substantially affected party with requisite standing to initiate a proceeding, Petitioner must show (1) that s/he will suffer an injury in fact which is of sufficient immediacy to entitle her/him to a section 120.57(1),

show (1) that s/he will suffer an injury in fact which is of sufficient immediacy to entitle her/him to a section 120.57(1), F.S., hearing, and (2) that her/his substantial interest is of a type or nature which the proceeding is designed to protect. Agrico v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 1st DCA 1981). Petitioner has not alleged that s/he owns any adjacent property which may be affected by the work. Petitioner has not alleged that s/he has incurred a special injury different from that potentially suffered by the general public. No citizen is allowed to initiate and maintain a proceeding without meeting the substantial interest test. Greene v. Department of Natural Resources, 414 So.2d 251, 253 (Fla. 1st DCA 1982). Merely alleging that s/he is a student at the University of North Florida, a taxpayer and a member of local environmental groups does not show how Petitioners are "substantially affected" any more than the general public by the District's decision to issue this permit. See Grove Isle v. Bayshore Homeowners' Association, 418 So.2d 1046 (Fla. 1st DCA 1982).

9. Petitioner has not made the requisite showing that s/he is substantially interested in a manner different from the general public. S/he, therefore, cannot initiate this proceeding under Section 120.57, F.S.

WHEREFORE, the District requests that this proceeding be dismissed.

Respectfully submitted,


CLARE E. GRAY
Attorney for Respondent
St. Johns River Water
Management District
Post Office Box 1429
Palatka, Florida 32178-1429
(904) 328-8321

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one true and correct copy of the foregoing MOTION TO DISMISS OR TO STRIKE has been forwarded by United States Mail this 13th day of June 1990 to:

DIVISION OF ADMINISTRATIVE HEARINGS
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550;

and one true and correct copy to the following parties of record:

TERESA BURKITT


CATHLENE DENNY