

2-12-01

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FILED

DOH-01-0753-Fof-HST  
Final Order No. \_\_\_\_\_ Date 5-25-01

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

MAY 31 PM 1:21  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FILED

Department of Health  
AGENCY CLERK

Theodore M. Henderson, Agency Clerk

By Amy L. Thomas  
Deputy Agency Clerk

ADELE SELLERS,  
  
Petitioner,

vs.

CASE NO. 00-3445 ESD

DEPARTMENT OF HEALTH,  
  
Respondent.

FINAL ORDER

THIS MATTER comes before me for consideration of the Recommended Order entered by the Administrative Law Judge previously appointed to conduct an administrative hearing involving disputed issues of material fact in this matter.

This matter arises from the Respondent's denial of Petitioner's application for a variance to operate an on-site sewage treatment and disposal system for the property located at 8250 Scenic Highway, Pensacola, Florida. Following a completed hearing in this matter, the Administrative Law Judge entered a Recommended Order in which she recommended that Respondent enter a Final Order permitting Petitioner to operate the tavern located on the property in question either with a connection to the existing sewer system or with installation of a septic tank and drainfield system in accordance with the current Florida Administrative Code rules for an occupancy capacity of 24 patrons; or alternatively, to grant Petitioner a 12-month variance to utilize the existing tank and drainfield system located on the property subject to certain terms and conditions as set

forth in the Recommended Order. A copy of the Recommended Order was served on both parties. As of the date of the Order, neither party has filed an exception to the Recommended Order.

Accordingly, it is hereby ORDERED that the Recommended Order is hereby approved and adopted as the final order of the Department. It is further ORDERED and ADJUDGED that Petitioner shall be permitted to operate the tavern located at 8250 Scenic Highway, Pensacola, Florida either with a connection to the existing sewer system or with the installation of a septic tank and drainfield system in accordance with the current Florida Administrative Code rules for an occupancy capacity of 24 patrons. Alternatively, Petitioner is hereby granted a 12-month variance to utilize the existing tank and drainfield system located on the said property subject to the following terms and conditions:

(a) Petitioner shall obtain and maintain an annual OSTDS operating permit allowing inspection at will by the Department;

(b) Petitioner shall maintain an annual contract with a licensed septic tank contractor to inspect and service the existing OSTDS at least once per month, or more frequently as necessary;

(c) Petitioner shall maintain an annual contract with a licensed septic tank contractor to inspect and service the existing OSTDS at least once per month, or more frequently as necessary;

(d) Upon notification by the septic tank contractor of any problem with the OSTDS, Petitioner shall provide port-a-potties sufficient for 22 patrons;

(e) During the 12 months the variance is in place, Petitioner shall provide a port-a-potty on any occasion of rain over eight hours' duration.

(f) Petitioner shall not open for business until low-flow toilets are substituted;

(g) Petitioner shall operate the premises as a tavern for no more than 12 months, during which 12 months Petitioner shall take all necessary steps to bring the system up to Code or to connect to the sewer line;

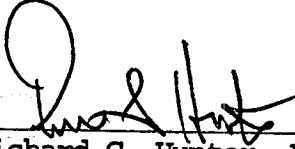
(h) During the 12 months the variance is in place, Petitioner shall limit hours of operation to 15 hours daily; eliminate all deck seating; provide no more than 22 seats inside; and actively limit occupancy to 22 patrons at any one time; and

(i) At the end of the 12 months, the system shall be in compliance or the tavern shall be closed and remain closed until compliance is achieved.

This Order shall be effective upon filing with the Clerk of the Department of Health.

DONE and ORDERED this 24<sup>th</sup> day of May 2001,  
in Tallahassee, Leon County, Florida.

ROBERT G. BROOKS, M.D.  
Secretary, Department of Health

By:   
Richard G. Hunter, Ph.D.  
Deputy State Health Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS MAY BE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY ACCOMPANIED BY THE FILING FEES REQUIRED BY LAW WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THIS FINAL ORDER.

Copies Furnished to:

Ella Jane P. Davis  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

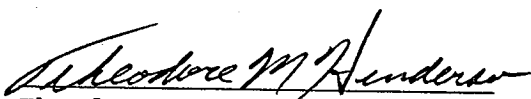
Steven E. Melei, Esquire  
3603 Mobile Highway  
Pensacola, FL 32505

Rodney Johnson, Esquire  
Department of Health  
1295 West Fairfield Drive  
Pensacola, Florida 32505

Gerald Briggs, Bureau Chief  
Department of Health  
Environmental Health/On-Site Sewage Programs  
BIN #A08  
4052 Bald Cypress Way  
Tallahassee, FL 32399-3260

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FINAL ORDER has been sent by U.S. Mail, inter-office mail or by hand delivery to each of the above-named persons this 29<sup>th</sup> day of May 2001.



Theodore M. Henderson  
Agency Clerk  
Department of Health  
BIN A02  
4052 Bald Cypress Way  
Tallahassee, FL 32399-1703  
Telephone: (850) 245-4005