

Received Event (Event Succeeded)

Date: 9/24/03  
Pages: 624  
Remote CSID:

Time: 12:01 AM  
Sender:

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

Michael M. Singer,  
Petitioner  
vs.

Timothy and Hope DeLong  
and State of Florida Department of  
Environmental Protection  
Respondents

) DOAH Case No.: 01-3327  
) OGC Case No: 01-0927  
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*JVL-closed*

**MOTION TO REOPEN DOAH Case No. 01-3327 AND SET HEARING.**

Petitioner hereby respectfully requests that DOAH Case No. 01-3327 be reopened for the following reasons:

1. Petitioner had coordinated his dates of mutual availability for the final hearing with Francine Ffolkes as directed by Judge Stampelos after he secluded himself from the case. August 9<sup>th</sup>, 2002 was not a date offered by the petitioner. See attached Exhibit A.

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2. Petitioner had requested an emergency postponement for the Hearing scheduled for August 8<sup>th</sup> and 9<sup>th</sup>, 2002 from Judge Van Laningham during the pre-hearing telephone conference held on August 6, 2002.
3. Petitioner voluntarily withdrew without prejudice his petition for an administrative hearing due to ill health before having the ability to start his case and enter any evidence into the record. See REQUEST TO WITHDRAW PETITION FOR ADMINISTRATIVE HEARING filed by facsimile and dated August 7, 2002.
4. Judge Van Laningham allowed respondents to reopen DOAH Case No.: 01-3327 over the objection of the petitioner who "requests that the Respondent's Motion to Reopen Case and Set Hearing be denied or in the alternative that the entire case be reopened and that a competent legal representative be appointed by the State to represent the Petitioner, since any further evidence submitted by the Petitioner in response to Respondent's allegation of improper use goes to the merit of the Petitioner's case which he has yet to advance." See OBJECTION TO ORDER REOPENING PROCEEDINGS DATED AUGUST 26, 2002, filed by facsimile by petitioner on September 5, 2002.
5. An ERP PROPRIETARY/REGULATORY INSPECTION REPORT made on January 28, 2002, FDEP ERP No: 0153725-003, by Chad Gracsek from the local DEP office, on the Delong dock established "the dock was constructed in variation to what was indicated in the application drawing." This report was faxed to all parties on February 5, 2002. In fact with the removal of File 003 by the Respondents, the Delong dock is with out a legal permit since the application in File 002 is for a dock located in a location South of it's present location as well as different in size

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and layout. This information is presently under investigation by the City of Boynton Beach, who was responsible for issuing the actual building permit # 00-5680 for the Delong dock.

6. Finally Judge Van Laningham in his ORDER filed March 31, 2003 on page 11 stated:

"12. In withdrawing their second application, the Owners materially changed their position and substantially modified the outcome of the most relevant preliminary agency action at issue, namely, the Second Action approving the Redesigned Dock. Indeed, by nullifying the Second Action, the Owners forfeited the only express authorization, albeit a preliminary one, that they had ever obtained from the Department for the Redesigned Dock. Thus, in other words, rather than defend the Department's preliminary approval of the Redesigned Dock in this proceeding, the Owners elected to rely upon the First Action as a defense against any future claim that the As-Built Dock is an illegal, unpermitted project."

3/ The undersigned is not suggesting that such a claim necessarily would have merit. Suffice it to say, however, it is not self-evident that the First Action approves the As-Built Dock, which—no one disputes—is different from the Approved Dock. Whether the differences are minor or substantial, which question goes to the heart of whether the As-Built Dock is properly permitted, is an issue that must be resolved, if ever, in another proceeding.

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**EXHIBIT A**

Dear Ms. Ffolkes,

As you can clearly see by the email that I originally sent you on April 19, 2002 I did not indicate my availability for a continuance on any Friday yet our continuance has been scheduled for August 8 and 9, 2002. August 9, 2002 is a Friday and I will be unavailable. I believe the problem results from your listing Thursdays as a start time for a two-day hearing. Please advise DOAH of your error and have them schedule the start date to a Tuesday or Wednesday.

Thank you for your kind and prompt attention to this matter.

Sincerely,

Michael M. Singer

**From:** scubarns  
**To:** Francine Ffolkes  
**Sent:** Friday, April 19, 2002 12:32 PM  
**Subject:** scheduling continuance DOAH case# 01-3327

Dear Ms. Ffolkes,

This email will confirm our conversation that took place in court on April 17, 2002 regarding available dates for continuance. I indicated to you that at this time I see no conflict in the immediate future for scheduling the continuance on any mutually convenient Tuesday or Wednesday with the contemplation that the hearing will finish by Thursday. I have left this information with Mr. Friedland's secretaries and conveyed the fact that the actual coordination of dates will be done by you as directed by Judge Stampelos. Please confirm the receipt of this email.

Thank you for your kind and prompt attention to this matter.

Sincerely,

Michael M. Singer

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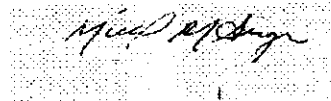
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I HEREBY CERTIFY that a copy of the foregoing was furnished by facsimile to: Kirk Friedland, Suite 1330, 505 South Flagler Drive, West Palm Beach, FL 33401 and to the State of Florida Department of Environmental Protection, Francine Ffolkes, Senior Assistant General Counsel, 3900 Commonwealth Blvd., The Douglas Building, Mail Station 35, Tallahassee, FL 32399-3000 this 24<sup>th</sup> day of September, 2003.

Michael M. Singer

695 Lakeside Harbor

Boynton Beach, FL 33435



Michael M. Singer

D.E.P. Fax Filed to: (850) 245-2303

DOAH Fax Filed to: (850) 921-6847