

8-1-03

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

DAVID COOK,

Petitioner,

vs.

STATE OF FLORIDA, BOARD OF
TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND,

Respondent.

AX

PMK-CWS

OGC CASE NO.: 02-1094
DOAH CASE NO.: 02-3149

FINAL ORDER

On August 1, 2003, an administrative law judge with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order to the Department of Environmental Protection ("DEP"), as staff to the State of Florida, Board of Trustees of the Internal Improvement Trust Fund ("Trustees") in this formal proceeding. A copy of the Recommended Order is attached as Exhibit A. The Recommended Order indicates that copies were served upon the *pro se* Petitioner, David Cook ("Cook"), and upon counsel for the Trustees. The matter is now before the Secretary of DEP for final agency action.

BACKGROUND

Cook filed a petition in July of 2002 challenging the Trustees' denial of his application for a Butler Act Disclaimer (the "Disclaimer") to certain sovereignty submerged lands pursuant to § 253.129, Florida Statutes, and Rule 18-21.019, Florida Administrative Code ("the Rule"). The submerged lands at issue in this case are

located under the waters of the Amelia River in Nassau County, Florida. Cook contends that he holds title to those submerged lands pursuant to the Butler Act, because his predecessors in title to the adjacent uplands built “permanent improvements” on the submerged lands in the early 1900s.

The Rule adopts and incorporates by reference the Disclaimer application form designated as “DEP 63-031(16)” (the “Form”). A basic requirement of the Form is that the applicant must provide a certified survey containing various data. The required data in the survey includes the location of the present mean high water line, and the location of the improvements and mean high water line prior to May 29, 1951 (date of repeal of the Butler Act). The Form also requires Cook to provide a legal description of the filled [improved] parcel of submerged lands. DEP, serving as the Trustees’ staff, reviewed Cook’s Disclaimer application and determined that he had not supplied the survey and other information required by Section 5 of the Form. Consequently, DEP issued a letter in July of 2002 notifying Cook that his Disclaimer application was denied.

DOAH PROCEEDING

Cook subsequently filed a petition challenging the denial of his Disclaimer application. DEP forwarded this petition to the Division of Administrative Hearings (“DOAH”), and Administrative Law Judge P. Michael Ruff (“ALJ”) was assigned to preside over the case. The ALJ held a formal hearing in this case on May 19, 2003. Cook’s primary claim in the DOAH proceeding was that he had supplied all of the information required by the Rule.

After the formal hearing was concluded, the ALJ entered the Recommended Order now on administrative review. Based on the evidence presented at the final

hearing, the ALJ found that Cook had not provided a legal description of the submerged lands or a certified survey containing the information required by Section 5 of the Form. The ALJ thus concluded that Cook was not entitled to a Disclaimer from the Trustees under the Butler Act. The ALJ recommended that the Trustees enter a final order dismissing Cook's petition.

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in the DOAH hearing procedures or in the administrative law judges' findings of fact by filing exceptions to any recommended orders submitted to the agencies. See Couch v. Commission on Ethics, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); Florida Dept. of Corrections v. Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). The ALJ's Recommended Order expressly rejects Cook's claims that he complied with all the Rule requirements and was thus entitled to a Disclaimer from the Trustees to the submerged lands in question. Nevertheless, Cook did not file Exceptions to the Recommended Order objecting to any of the ALJ's findings of fact or objecting to the DOAH hearing procedures.

The Trustees filed Exceptions identifying two clerical errors in the Recommended Order. The first Exception correctly notes that the comma in the phrase "the Hardee, Trustees" in paragraph 22 of the Recommended Order is inappropriate and should be omitted. The second exception asserts that the reference to "Mr." Knetsch in paragraph 25 of the Recommended Order should be to "Dr." Knetsch. These two unopposed clerical Exceptions of the Trustees are granted.

Having considered the applicable law in light of the uncontested findings of fact in the Recommended Order, and being otherwise duly advised, it is ORDERED that:

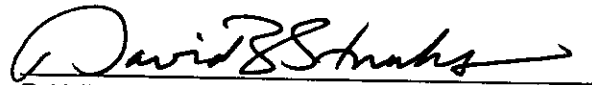
A. The Recommended Order (Ex. A), with the two minor clerical changes to paragraphs 22 and 25 noted above, is adopted and incorporated by reference herein.

B. Cook's application for a Disclaimer from the Trustees under Rule 18-21.019, Florida Administrative Code, is DENIED.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 27th day of October, 2003, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

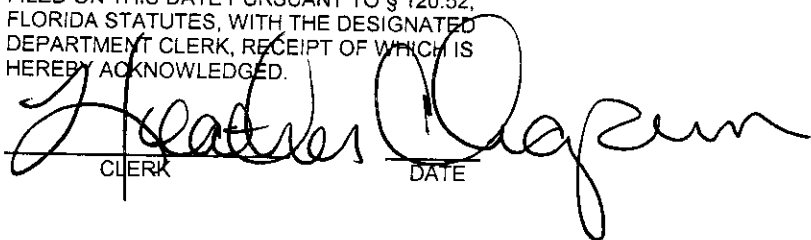


DAVID B. STRUHS

Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

 10/27/03
CLERK DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

David Cook
P. O. Box 30
Fernandina Beach, FL 32035

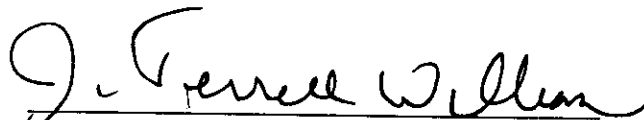
Ann Cole, Clerk and
Donald R. Alexander, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

and by hand delivery to:

Suzanne B. Brantley, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

this 28th day of October, 2003.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



J. TERRELL WILLIAMS
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