

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DAVID L. MCSHERRY; DECEMBER )  
MCSHERRY; DWIGHT ADAMS; SIERRA )  
CLUB, INC.; SUSTAINABLE ALACHUA )  
COUNTY, INC.; AND SAVING )  
FLORIDA, INC., )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 03-2711RU  
 )  
DEPARTMENT OF COMMUNITY )  
AFFAIRS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

SUMMARY FINAL ORDER

This cause originated from action of counsel for the Department of Community Affairs (DCA). By e-mail dated July 3, 2003, in the case of Preserving Rural Property Values, Inc., et al., vs. Alachua County, et al., DOAH Case No. 02-2676, DCA's counsel advised the county attorney for Alachua County as follows:

[Y]ou may advise the Commission, if you wish, that the Department is unaware of any violation of Florida Statutes relating to the mediation and settlement negotiations. Certainly the facts set forth in Mr. Russ's letter do not constitute a violation.

Subsequently, Counsel for Petitioners filed a Petition alleging that the foregoing statement of counsel for DCA

constituted an unpromulgated rule in violation of Section 120.54(1)(a), Florida Statutes.

In response, DCA filed a Motion for Summary Final Order on August 4, 2003, requesting dismissal of the Petition on the basis that the statement of its counsel did not constitute a rule as that term is defined in Chapter 120, Florida Statutes.

By separate motion dated August 6, 2003, Petitioners moved to strike the motion of the Department, stating that the Department's motion failed to dispute any fact alleged by the Petitioners in their initial Petition.

By order dated August 6, 2003, counsel for Petitioners was directed to respond to DCA's Motion for Summary Final Order no later than August 14, 2003. Counsel for Petitioners timely responded to the undersigned's order.

A review of the Motion for Summary Final Order, Response of Petitioners to DCA's Motion for Summary Final Order, and other pleadings filed in this matter has been completed.

Accordingly, ruling at this time upon DCA's Motion for Summary Final Order appears to be in order and in the best interest and most effective use of the administrative law system.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding pursuant to Section 120.56, Florida Statutes.

2. Petitioners allege that DCA, through DCA's counsel, has adopted a policy. Counsel's statement of DCA's position is nothing more than his legal opinion and, without more, does not rise to the level of stated agency policy. Therefore, it is not a rule as defined in Section 120.52(15), Florida Statutes.

3. Subsection 120.57(1)(h), Florida Statutes, reads in pertinent part as follows:

Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order.

Accordingly, upon review of the pleadings in this matter, the Motion for Summary Final Order is granted, Final Hearing scheduled in this cause for August 18, 2003, is cancelled, and the Petition is dismissed. All other pending motions are dismissed as moot.

DONE AND ORDERED this 18th day of August, 2003, in  
Tallahassee, Leon County, Florida, nunc pro tunc to August 15,  
2003.

*Don W. Davis*

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DON W. DAVIS  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of August, 2003.

COPIES FURNISHED:

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APPELLATE 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 RULE OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.