

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

FILED
06 DEC 18 AM 9:19
DIVISION OF
ADMINISTRATIVE
HEARINGS

CSX TRANSPORTATION, INC.,

Petitioner,

vs.

DOAH CASE NO.: 06-1491

DOT CASE NO.: 04-116

DEPARTMENT OF TRANSPORTATION
and MANATEE COUNTY,

Respondents.

FINAL ORDER

This proceeding was initiated by the filing of a Petition for Administrative Hearing on October 28, 2004, by **Petitioner, CSX TRANSPORTATION, INC.** (hereinafter **CSX**), pursuant to Section 120.57(1), Florida Statutes, in-response to a Notice of Intent to Permit sent on October 6, 2004, by the **Respondent, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**). On November 30, 2004, the matter was referred to the Division of Administrative Hearings (hereinafter **DOAH**) for assignment of an administrative law judge and a formal hearing. On December 30, 2004, **Respondent, MANATEE COUNTY**, filed a motion to intervene.

Formal administrative hearing was held in this case in Bradenton, Florida, on August 22, 2006, through August 23, 2006, before Robert S. Cohen, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: Lawrence N. Curtin, Esquire
Holland & Knight, LLP
315 South Calhoun Street, Suite 600
Post Office Box 810
Tallahassee, Florida 32302-0810

For Respondents: Bruce R. Conroy, Esquire
Chief Counsel
Administrative Law & Real Property Division
Department of Transportation
Haydon Burns Building, MS 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

Rodney C. Wade, Esquire
Robert M. Eschenfelder, Esquire
Assistant County Attorney
Manatee County
1026 26th Avenue East
Post Office Box 1000
Bradenton, Florida 34206-1000

At the hearing, the **DEPARTMENT** presented the testimony of Janice Bordelon, Rail Specialist for the Rail Office, Department of Transportation, and offered Petitioner's Exhibits 1 through 5, which were admitted into evidence. **MANATEE COUNTY** presented the testimony of Robert Shankle, Project Manager with the Project Management Department for Manatee County; Jeffrey Trim, P.E., accepted as an expert in the design of rail crossings and road design; G. Rex Nichelson, Jr., P.E., accepted as an expert in the opening and closing of railroad crossings; Jim Staples, Manager of Land Acquisition for Transportation, Board of County Commissioners, Manatee County; Larry Mau, P.E., Director of Transportation, Board of County Commissioners, Manatee County; and Harry Mendenhall, P.E., Assistant Transportation Director, Board of County Commissioners, Manatee County; and offered Exhibits 10 through 27, which were admitted into evidence. **CSX** presented the testimony of

Clifton Stayton, Director of Public Safety Awareness, CSX Transportation, Inc., and Eric Gary Peterson, Assistant Chief Engineer of Public Projects, CSX Transportation, Inc. CSX offered no exhibits into evidence. Official recognition was taken of all relevant statutes and rules. The transcript from the hearing was filed on September 19, 2006. On October 30, 2006, Proposed Recommended Orders were filed by the **DEPARTMENT, MANATEE COUNTY**, and **CSX**. On November 16, 2006, the Recommended Order was filed by Judge Cohen. No exceptions to the Recommended Order were filed.

STATEMENT OF THE ISSUE

As stated by the Administrative Law Judge in his Recommended Order, the issue presented was:

[W]hether the application submitted by Manatee County to the Florida Department of transportation to open a railroad-highway grade crossing in Bradenton, Florida, meets the criteria set forth in Florida Administrative Code Rule 14-57.012(2)(a)1-6.

BACKGROUND

On November 21, 2002, **MANATEE COUNTY**, filed an application with the **DEPARTMENT** for a permit to open an at-grade railroad-highway crossing at 44th Avenue East (between railroad mile posts SW 912.27 and SW 911.87), in Manatee County, Florida. On November 25, 2002, the **DEPARTMENT** notified **CSX** of the filing. On October 5, 2004, the **DEPARTMENT** issued a Notice of Intent to Permit the opening.

On October 28, 2004, **CSX** timely filed a Petition for Administrative Hearing. The matter was referred to DOAH on April 21, 2006, and was assigned to Robert S. Cohen, Administrative Law Judge. The case was set for hearing and discovery ensued.

The formal administrative hearing was commenced on August 22, 2006, before Judge Cohen.

FINDINGS OF FACT

After review of the record in its entirety, it is determined that the Administrative Law Judge's Findings of Fact in paragraphs 1 through 34 of the Recommended Order are supported by competent, substantial evidence. As such, they are adopted in their entirety and incorporated as if fully set forth herein.

CONCLUSIONS OF LAW

1. The **DEPARTMENT** has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapters 120 and 335, Florida Statutes.

2. The Conclusions of Law in paragraphs 35 through 49 of the Recommended Order are fully supported in law. As such, they are adopted in their entirety and incorporated as if fully set forth herein.

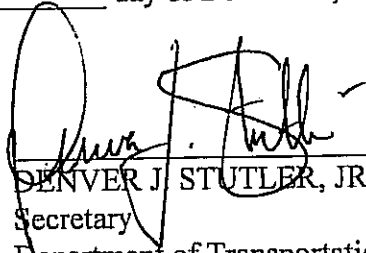
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the **DEPARTMENT** adopts the Administrative Law Judge's Recommended Order in its entirety. It is further

ORDERED that Manatee County be granted a permit to open an at-grade railroad-highway crossing at 44th Avenue East, in Manatee County, Florida.

DONE AND ORDERED this 15th day of December, 2006


DENVER J. STUTLER, JR., P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2008 DEC 15 AM 9:19

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.100(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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The Honorable Robert S. Cohen
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