

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

FILED
2012 DEC 10 PM 12 02
DIVISION OF
ADMINISTRATIVE
HEARINGS

SHANE HENRY,

Petitioner,

DOAH CASE NO. 12-1959
DOT CASE NO. 10-163

vs.

**CSX TRANSPORTATION, INC., AND
DEPARTMENT OF TRANSPORTATION,**

Respondent,

CITY OF HAWTHORNE,

Petitioner,

DOAH CASE NO. 12-1961
DOT CASE NO. 10-167

vs.

**CSX TRANSPORTATION, INC., AND
DEPARTMENT OF TRANSPORTATION,**

Respondent,

FINAL ORDER

On October 28, 2010, the Department of Transportation (Department) issued a Notice of Intent to Permit Closure of a highway-rail grade crossing at SE 222nd Street in Hawthorne, Florida, to the rail operator, CSX Transportation, Inc. (CSX). On November 15, 2010, Petitioner, Shane Henry (Henry) filed a petition opposing the proposed closure. On November 17, 2010, the City of Hawthorne filed a petition opposing the proposed closure.

On May 30, 2012, the Department referred the petitions to the Division of Administrative Hearings (DOAH) for assignment of an Administrative Law Judge (ALJ). An Order of

Consolidation for the two individual petitions was entered June 12, 2012.

On July 30, 2012, the City of Hawthorne withdrew its petition challenging the crossing closure. On November 20 2012, the City of Hawthorne, CSX Transportation, Inc., and the Department of Transportation entered into a settlement agreement agreeing to the crossing closure with CSX and the Department to each provide a closure incentive cash payment of \$7,500.00 to the City of Hawthorne. The settlement agreement was contingent upon resolution of any remaining petitions in this cause and issuance of a final order approving of the closure.

A final hearing on the petition brought by Dr. Shane Henry was heard in Hawthorne, Florida, on August 3, 2012, before Administrative Law Judge Lawrence Stevenson.

Appearances on behalf of the parties were as follows:

For Petitioner, Shane Henry:	David Petrano, Esquire 11502 SE U.S. Highway 301 Hawthorne, Florida 32640
For Respondent, Department:	John A. Minnick, Assistant General Counsel Susan Schwartz, Assistant General Counsel Department of Transportation 605 Suwannee Street Tallahassee, Florida 32399
For Respondent, CSX Transportation:	Sara F. Holladay-Tobias, Esquire McGuire Woods, LLP 50 North Laura Street, Suite 3300 Jacksonville, Florida 32202

A transcript of the proceedings was filed on August 27, 2012. The Department filed a Proposed Recommended Order on September 25, 2012 and CSX filed a Proposed Recommended Order on October 2, 2012. Dr. Henry did not file a Proposed Recommended Order. The ALJ entered his Recommended Order on October 26, 2012, wherein he recommended the Department enter a final order approving the closure of the highway-railroad crossing located at SE 222nd Street, in Hawthorne, Florida. No exceptions have been filed.

STATEMENT OF THE ISSUE

The issue as presented in the Recommended Order is:

Whether the Department of Transportation may issue a permit authorizing CSX Transportation, Inc. to close the public railroad-highway grade crossing 627445-K (the "Crossing") located at SE 222nd Street in Hawthorne, Florida.

FINDINGS OF FACT

1. By executing the Settlement Agreement, the City of Hawthorne has withdrawn its hearing request.

2. After review of the record in its entirety on the petition brought by Dr. Shane Henry, it is determined that the ALJ's Findings of Fact in paragraphs 1 through 30 of the Recommended Order in DOAH Case No. 12-1959, are supported by competent, substantial evidence and are adopted and incorporated as if fully set forth herein.

CONCLUSIONS OF LAW

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

4. The Conclusions of Law in paragraphs 31 through 40 of the Recommended Order in DOAH Case No. 12-1959, are fully supported in law, and are adopted and incorporated as if fully set forth herein.

ORDER

Based on the foregoing Findings of Fact and Conclusion of Law, it is

ORDERED that the attached Settlement Agreement is approved and incorporated herein.

The Petition for Administrative Hearing filed by the City of Hawthorne is withdrawn. It is further

ORDERED that the Petition for Administrative Hearing filed by Shane Henry is DENIED. It is further,

ORDERED that Highway-Rail Grade Crossing Number 627445 K located at SE 222nd Street in Hawthorne, Florida, is to be closed by roadway removal.

DONE AND ORDERED this 6th day of December, 2012.



Ananth Prasad, P.E.
Secretary
Department of Transportation
605 Suwannee Street
Haydon Burns Building
Tallahassee, Florida 32399-0458

FILED D.O.T. CLERK
2012 DEC -7 AM 9:52

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED 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 9.110(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 30 DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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