

**STATE OF FLORIDA
NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT**

HELEN J. CRENSHAW,

Petitioner,

vs.

NFWMD Permit No. 04-2012-0013G
DOAH Case No. 12-3280

VISTA OF FORT WALTON BEACH, LLC,
AND NORTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,

Respondents.

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FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its designated Administrative Law Judge (“ALJ”), D. R. Alexander, held a formal administrative hearing in this matter on January 22, 2013, in DeFuniak Springs, Florida. On March 11, 2013, the ALJ submitted a Recommended Order (“RO”) to the Northwest Florida Water Management District (“District”). Petitioner Helen J. Crenshaw (“Petitioner”) timely filed exceptions to the Recommended Order. This matter came before the Governing Board of the District on April 11, 2013 for final agency action and entry of a Final Order herein.

1. STATEMENT OF THE ISSUE

The general issue before the District is whether to adopt the Recommended Order as the District’s Final Order, or to reject or modify the Recommended Order in whole or in part, in accordance with Section 120.57(1)(l), Florida Statutes. The specific issue is whether Surface Water Management Permit No. 04-2012-0013G (“Permit”), authorizing the construction of an

earthen embankment dam and impoundment to impound stormwater runoff from a proposed commercial development in the City of DeFuniak Springs, Walton County, Florida, should be issued by the District to Vista of Fort Walton Beach, LLC (“Vista”). The ALJ recommended that the District enter a final order approving the issuance of the Permit to Vista.

2. STANDARD OF REVIEW

The rules regarding an agency’s consideration of and action on exceptions to a recommended order are well established in Florida law. Section 120.57(1)(l), Florida Statutes, establishes specific standards for agency review of findings of fact as well as for agency review of conclusions of law.

Review of Findings of Fact

A reviewing agency may not reject or modify findings of fact, unless the agency first determines, from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings below did not comply with essential requirements of law. See §120.57(1)(l), Fla. Stat. The term “competent substantial evidence” means evidence sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. See *Perdue v. TJ Palm Associates, Ltd.*, 755 So. 2d 660, 665-666 (Fla. 4th DCA 1999), quoting from and following *Degroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The term “competent substantial evidence” refers to the existence of some quantity of evidence for each essential element of a finding and to the legality and admissibility of that evidence. See *Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n.*, 671 So 2d 287, 289 n.3 (Fla. 5th DCA 1996).

An agency may not disturb a finding of fact supported by any competent substantial evidence from which the finding could be reasonably inferred. See *Freeze v. Dep’t of*

Transportation, 556 So. 2d 1204, 1205 (Fla. 5th DCA 1990); and *Berry v. Dep't of Env'tl. Reg.*, 530 So. 2d 1019, 1022 (Fla. 4th DCA 1988). The Governing Board may not reweigh evidence admitted in the proceeding below, may not resolve conflicts in the evidence and may not judge the credibility of witnesses or otherwise interpret evidence anew. See *Save Anna Maria, Inc. v. Dep't of Transportation*, 700 So. 2d 113, 118 (Fla. 2d DCA 1997; and *Brown v. Criminal Justice Standards & Training Comm'n*, 667 So. 2d 977, 979 (Fla. 4th DCA 1996). The standard is not whether the record contains evidence contrary to the findings of fact in the recommended order, but whether any competent substantial evidence supports each finding in issue. See *Florida Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 1st DCA 1991).

Review of Conclusions of Law

The Governing Board may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction, provided the reasons for such rejection or modification are stated with particularity and the Governing Board finds that such rejection or modification is as or more reasonable than the ALJ's conclusion or interpretation. See §120.57(1)(I), Fla. Stat.

The Governing Board lacks subject matter jurisdiction to overturn an ALJ's rulings on procedural and evidentiary issues. See *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001) (the agency lacked jurisdiction to overturn an ALJ's evidentiary ruling); and *Lane v. Dep't of Env'tl. Protection*, 29 F.A.L.R. 4063 (DEP 2007) (the agency has no substantive jurisdiction over procedural issues, such as whether an issue was properly raised, and over an ALJ's evidentiary rulings); and *Lardas v. Dep't of Env'tl. Protection*, 28 F.A.L.R. 3844, 3846 (evidentiary rulings of the ALJ concerning the admissibility and competency of evidence are not matters within the agency's substantive jurisdiction).

In issuing its Final Order, the Governing Board is not required to rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. See §120.57(1)(k), Fla. Stat.

3. RULINGS ON EXCEPTIONS

Petitioner's Exception No. 1

Petitioner's first exception reargues Petitioner's conclusory statements made at hearing that water levels of the wetlands area near or on Petitioner's property have been affected by Vista's improvement of its property. This exception does not clearly identify the disputed portion of the recommended order by page number or paragraph, does not identify the legal basis for the exception, and does not include appropriate and specific citations to the record. Therefore, pursuant to Section 120.57(1)(k), Florida Statutes, the Governing Board need not rule on this exception. Moreover, the fact that there may be testimony contrary to the finding of fact made by the ALJ does not render the finding invalid. The standard is not whether the record contains evidence contrary to the findings of fact in the RO, but whether *any* competent substantial evidence supports the finding(s) in issue. See *Florida Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 1st DCA 1991). The Governing Board may not reweigh evidence admitted in the hearing, may not resolve conflicts in evidence and may not judge the credibility of witnesses or otherwise interpret evidence anew. See *Save Anna Maria, Inc. v. Dep't of Transportation*, 700 So. 2d 113, 118 (Fla. 2d DCA 1997). Consequently, Petitioner's Exception No. 1 is denied.

Petitioner's Exception No. 2

Petitioner's second exception appears to take issue with the last sentence of Paragraph 6 of the RO, a finding of fact, which states, "In a broader sense, she [Petitioner] appears to be opposed to any commercial development on Vista's property." See RO, page 5. As previously set forth, in reviewing a finding of fact the Governing Board may not reweigh evidence admitted in the hearing, may not resolve conflicts in evidence and may not judge the credibility of witnesses or otherwise interpret evidence anew. See *Save Anna Maria, Inc. v. Dep't of Transportation*, 700 So. 2d 113, 118 (Fla. 2d DCA 1997). Consequently, Petitioner's Exception No. 2 is denied.

Petitioner's Exception No. 3

Petitioner's third exception again reargues Petitioner's factual position at hearing that the wetlands area near or on Petitioner's property has been impacted by Vista's improvement of its property. This exception fails to comply with the requirements of Section 120.57(1)(k), Florida Statutes, and further reargues a finding of fact made by the ALJ. For the reasons set forth in the denials of Petitioner's first two exceptions, Petitioner's Exception No. 3 is denied.

Petitioner's Exception No. 4

Petitioner's fourth exception takes issue with the weight given by the ALJ to the testimony of certain witnesses. This exception fails to comply with the requirements of Section 120.57(1)(k), Florida Statutes, and further reargues a finding of fact made by the ALJ. For the reasons set forth in the denials of Petitioner's first two exceptions, Petitioner's Exception No. 4 is denied.

Petitioner's Exception No. 5

Petitioner's fifth exception attempts to make an *adverse possession* argument pursuant to Section 95.16, Florida Statutes. This exception fails to comply with the requirements of Section 120.57(1)(k), Florida Statutes. Moreover, as noted in the preliminary discussion of this agency's authority regarding review of the ALJ's conclusions of law, Section 120.57(1)(l), Florida Statutes, provides that Governing Board may only modify or reject those conclusions of law *over which it has substantive jurisdiction*. As correctly noted by the ALJ in the RO at Paragraph 12, page 8, the Governing Board does not have jurisdiction over the type of dispute argued by Petitioner in her fifth exception because such can only be resolved in circuit court, and not in an administrative forum. See §26.012(2)(g), Fla. Stat. Consequently, Petitioner's Exception No. 5 is denied.

FINAL ORDER

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Recommended Order dated March 11, 2013, a copy of which is attached hereto as Exhibit "A," is adopted in its entirety.

2. The Northwest Florida Water Management District approves the issuance of Surface Water Management System Permit No. 04-2012-0013G to Vista of Fort Walton Beach, LLC.

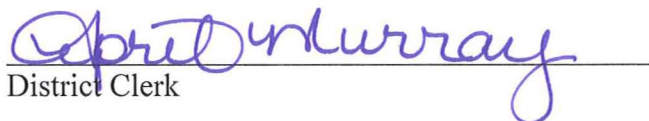
DONE AND ORDERED this 11th day of April, 2013, in Havana, Florida.

NORTHWEST FLORIDA WATER
MANAGEMENT DISTRICT



George Roberts
Governing Board Chair

RENDERED this 11th day of April, 2013



District Clerk