

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

**MICHAEL BOXBERGER and KELLI
BOXBERGER, d/b/a “THE FUNKY FIDDLER”,**

Petitioners,

vs.

**DOT CASE NO. 17-053
DOAH CASE NO. 18-0279**

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

On September 18, 2017, Petitioners, Michael and Kelli Boxberger, d/b/a “The Funky Fiddler” (Boxberger) filed a Petition for Formal Administrative Hearing (Driveway Petition) concerning the Department of Transportation (Department) Notice of Intent to Modify Driveway Connection (Notice) issued on August 4, 2017. The Boxbergers, through their attorney representative Ronald A. Mowrey, alleged receipt of the Department’s Notice on August 29, 2017, and filed the Driveway Petition pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

The Boxberger Driveway Petition, identified as Department Case No. 17-053, was not forwarded to the Division of Administrative Hearings, rather was held in abeyance until the Parties were able to conduct a site visit to inspect the operational and safety concerns of the State Road 30/61 (U.S. 98) driveway connection to the Boxberger property.

On November 20, 2017, the Department issued an Amended Notice of Intent to Modify Driveway Connections (Amended Notice). The Department’s Notice and Amended Notice

indicated that it was acting to modify the Boxberger driveway connection to State Road 30/61 (U.S. 98) Coastal Highway pursuant to Sections 334.044(14), 335.182, 335.187, Florida Statutes, and Florida Administrative Code Rules 14-96.011 and 14-96.015.

The Department's Amended Notice to Ms. Boxberger clarified the substance of the Department's proposed action but set forth no material changes. Thereafter, Boxberger did not file a response objecting to the Amended Notice within 21 days as provided for in the Notice of Administrative Hearing Rights.

In a related matter, on January 16, 2018, Michael Boxberger and Kelli Boxberger, d/b/a "The Funky Fiddler." filed a Section 57.111(3)(d), Florida Statutes, Fees Petition with the Division of Administrative Hearings. On October 30, 2018, in DOAH Case No. 18-0279, the Administrative Law Judge issued a Final Order and DENIED the Petition to Award Attorneys' Fees and Costs. The ALJ's Final Order found that pursuant to Section 57.111, Florida Statutes, the Boxbergers were not "prevailing parties," the Department's actions were "substantially justified" with a reasonable basis in law and fact at the time the action at issue was taken, that the Department was clearly acting in the interest of public safety and as a result, "special circumstances" would make an award of fees and costs to the Petitioners inequitable.

On March 19, 2019, in Department Case No. 17-053, the Department issued an Order of Dismissal Without Prejudice holding that the Boxberger Driveway Petition was moot as the Department received no response disputing or agreeing to the Amended Notice of modifications to the Boxberger State Road 30/61 (U.S. 98) Coastal Highway driveway connection to their Property. Additionally, the Department found that the issue presented in Department Case No. 17-053 was no longer live due to the ALJ's Final Order in DOAH Case No. 18-0279F finding

that the Department actions were substantially justified with a reasonable basis in law and fact. *Montgomery v. Dep't of Health & Rehab. Services*, 468 So. 2d 1014, 1016 (Fla. 1st DCA 1985).

The Department's Order of Dismissal Without Prejudice ordered that the Boxbergers have 10 days to file a response with the Department's Clerk of Agency Proceedings addressing the deficiencies noted above; that upon review of such response, the Department would determine if the Boxberger Request for Formal Administrative Hearing in Department Case No. 17-053 was moot following the ALJ's Final Order in DOAH Case No. 18-0279F, and was subject to dismissal; and that if Petitioner did not file a response within 10 days of the date of this Order, a Final Order would issue dismissing the matter.

Boxberger filed no response to the deficiencies identified in the Department's Order of Dismissal Without Prejudice, and did not file an appeal of the Administrative Law Judge's Final Order Denying the Petitioner an Award of Attorney's Fees and Costs in DOAH Case. No. 18-0279F.

Based on the foregoing, it is

ORDERED that because Petitioner filed no response to the Department's Amended Notice of Modifications to the Boxberger driveway connection, and filed no response to the

Department's Order of Dismissal Without Prejudice, the Boxberger Request for Formal Administrative Hearing in Department Case No. 17-053 is therefore dismissed.

DONE AND ORDERED this 27th day of June, 2019.



KEVIN J. THIBAUT, P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2019 JUN 27 PM 1:00

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 9.110(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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