

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

**JOHN MAJKA AND ON BEHALF OF  
HARRY E. MILLER, DECEASED,**

**Petitioner,**

**DOAH CASE NO. 18-4433  
DOT CASE NO. 18-008**

**vs.**

**DEPARTMENT OF TRANSPORTATION,**

**Respondent.**

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**FINAL ORDER OF DISMISSAL**

On February 2, 2018, Petitioner John Majka filed a Request for Administrative Hearing with the Department of Transportation (Department) on behalf of Harry E. Miller, Deceased. Petitioner owns adjacent property to, and is the tenant of, the Harry E. Miller property located at 13850 Palm Beach Boulevard, Fort Myers, Florida. In the Request for Administrative Hearing, Petitioner alleged he represented the Estate of Harry E. Miller and attached a copy of the Department's December 7, 2017, Notice of Intent to Modify the Driveway Connection (Notice) for the Miller property. In addition to serving the Petitioner as the adjacent property owner, the Department sent a certified mail Notice to Harry E. Miller which was returned as undeliverable.

On August 18, 2018, the Department referred Petitioner's request for hearing to the Division of Administrative Hearings for the assignment of an Administrative Law Judge. On November 2, 2018, the Department filed a response in opposition to Petitioner's Motion to Dismiss, filed October 29, 2018, and Motion to Strike, filed October 30, 2018, and argued that Petitioner lacked standing as he failed to provide any documentation that he represented the

Estate of Harry E. Miller and failed to establish an entitlement to a Section 120.57 hearing.

On November 6, 2018, the ALJ issued an Order Directing Department to Issue a More Definitive Statement and Denying Petitioner's Motion to Strike; acknowledged that Petitioner withdrew the Motion to Dismiss; did not rule on the Department's objection to Petitioner's lack of standing; and by separate order rescheduled the hearing to January 22, 2019.

On November 9, 2018, the Department filed a Notice of Project Update to Driveway Connection (Notice Update) replacing the previously proposed 36-foot wide Miller driveway with a 53-foot driveway. On November 13, 2018, the ALJ issued an Order Granting Extension of Time for Petitioner to respond to the Department's Notice Update. On November 23, 2018, with no authority to act on behalf of the Estate of Harry E. Miller, Petitioner rejected the Department's Project Update to Driveway Connection.

On December 6, 2018, the Department filed a Motion to Compel Identification of the Representative of the Estate of Harry E. Miller in order to properly serve the Estate<sup>1</sup> and obtain a position on the Department's Notice Update. On December 12, 2018, Petitioner filed a Motion to Abate the proceeding which failed to identify the Representative of the Estate of Harry E. Miller, and included a self-authenticated Letter of Authorization purporting to act on behalf of the Estate.

On December 13, 2018, the Administrative Law Judge issued an Order Cancelling Hearing and Requiring the Department to Show Cause as to why jurisdiction should not be

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<sup>1</sup> Despite the Department's multiple written requests to the Petitioner to identify the Representative of the Harry E. Miller Estate and mailing address for purposes of serving the Department's Notice of Intent to File Driveway Modification, no response was provided by the Petitioner. The Department recently discovered the contact information of the representative of the Estate of Harry E. Miller, and Eldridge Miller was served on January 9, 2019, with the Department's Notice of Filing Project Update to Driveway Connection, a settlement proposal identifying a 53-foot wide driveway connection to the Miller property.

relinquished to the Department to properly serve the actual property owner of its intent to take agency action. The ALJ also noted that Petitioner's Letter of Authorization was "only signed by Mr. Majka and contains no information about or signature by a representative of the Estate who purports to grant the authorization." The ALJ questioned whether the critical and necessary party had received notice of the Department's intended agency action and whether a proper request for an administrative hearing had been made by that party. Finally, the ALJ's order provided Petitioner an opportunity to provide "evidence that he had authority to receive the *initial* notice of intended agency action dating back to December 7, 2017, and to represent the Estate's interests in this proceeding."

On December 21, 2018, the Department filed a Response to ALJ's Show Cause Order agreeing that jurisdiction should be relinquished to the Department to serve the Estate of Harry E. Miller, the critical and necessary party whose prior certified mail service was returned as undeliverable. Subsequently, on January 2, 2019, the ALJ issued an Order Closing File and Relinquishing Jurisdiction back to the Department.

On January 14, 2019, Petitioner filed a Response to the Department's Response to the Show Cause Order and attached an Assignment and Durable Power of Attorney effective on January 12, 2019, identifying Petitioner as a representative of the Estate for Eldridge R. Miller. Petitioner's response identified new issues and failed to address the ALJ's Show Cause Order and failed to provide "evidence that he had authority to receive the *initial* notice of intended agency action dating back to December 7, 2017, and to represent the Estate's interests in this proceeding." Although Petitioner's Response acknowledged the Department's request, he once again failed to identify the address and telephone number of Eldridge R. Miller, the

Representative of the Harry Miller estate, necessary to serve the Department's Notice of Project Update.

On January 15, 2019, the ALJ issued an Order on No Jurisdiction confirming that jurisdiction was previously relinquished to the Department on January 2, 2019, when the Division of Administrative Hearings file was closed to allow service on all necessary and critical parties. Further, the ALJ acknowledged that he lacked jurisdiction to rule on the merits of the issues raised in Petitioner's response, including the attached power of attorney.

Dismissal of the Request for Administrative Hearing is appropriate as Petitioner John Majka was not the authorized legal representative of the Harry E. Miller estate when the Department's Notice of Intent to Modify Driveway Modification was issued on December 7, 2017, nor did he represent the estate on November 9, 2018, when the Department filed the Notice of Project Update to Driveway Connection which was eventually served on Eldridge Miller as the Representative of the Estate on January 9, 2019.

#### **CONCLUSIONS OF LAW**


1. The Department has jurisdiction over the subject matter of and the parties to this proceeding pursuant to the ALJ's January 2, 2019, Order Closing File and Relinquishing Jurisdiction to the Department, and Chapters 120, 334, and 335, Florida Statutes.

2. Petitioner lacked authority to file a Request for Administrative Hearing on behalf of the Estate of Harry E. Miller, and was not the critical and necessary party with regards to the Department's December 7, 2017, Notice of Intent to Modify Driveway, or the Department's December 9, 2018, Notice of Filing Project Update to Driveway Connection for the parcel owned by the Estate of Harry E. Miller.

Based on the foregoing, it is

**ORDERED** that the Petition for Administrative Hearing filed by John Majka, on February 2, 2018, is dismissed.

**DONE AND ORDERED** this 15<sup>th</sup> day of February, 2019.

  
for **KEVIN J. THIBAUT, P. E.**  
Secretary

Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, Florida 32399

FILED D.O.T. CLERK  
2019 FEB 15 AM 11:01

**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 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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*Florida Department of Transportation*


RON DESANTIS  
GOVERNOR

605 Suwannee Street  
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KEVIN J. THIBAUT, P.E.  
SECRETARY

**DELEGATION OF AUTHORITY**

I, Kevin J. Thibault, P.E., Secretary of the Florida Department of Transportation, delegate to Tom Byron, as the Assistant Secretary for Strategic Development and the Interim Assistant Secretary for Engineering and Operations, and April Blackburn, as the Interim Assistant Secretary for Finance and Administration, the authority and responsibility to take action on my behalf at anytime during my absence from the Department headquarters in Tallahassee. I also rescind any prior delegations to the contrary.

  
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Kevin J. Thibault, P.E., Secretary  
Florida Department of Transportation

  
\_\_\_\_\_  
Date