STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALAFOX, LLC,

Petitioner,

vs. Case No. 20-3014F

CARMEN DIAZ,

Respondent.
_____/

FINAL ORDER

The final hearing in this case was held via Zoom videoconference on August 19, 2020, in Tallahassee, Florida, before Suzanne Van Wyk, Administrative Law Judge of the Division of Administrative Hearings ("Division").

APPEARANCES

For Petitioner: W. Douglas Hall, Esquire
James E. Parker-Flynn, Esquire
Carlton Fields, P.A.
215 South Monroe Street, Suite 500
Post Office Drawer 190
Tallahassee, Florida 32301

For Respondent: Nicholas D. Fugate, Esquire
Nicholas D. Fugate, P.A.
Post Office Box 7548
Tallahassee, Florida 32314-7548

STATEMENT OF THE ISSUE

Whether Petitioner, Palafox, LLC ("Palafox"), is entitled to its reasonable attorney's fees and costs incurred in its defense of the challenge to its Environmental Resource Permit ("Permit") as raised in the Amended Petition

in the underlying administrative matter, filed by Respondent, Carmen Diaz or her attorney, Jefferson M. Braswell, or both, pursuant to section 120.569(2)(e), Florida Statutes.

PRELIMINARY STATEMENT

On September 12, 2019, the Northwest Florida Water Management District ("District") issued a Notice of Final Agency Action to issue the Permit to Palafox. Palafox had applied for the Permit from the District for a project known as Market District Housing ("the Project"), located at the intersection of Palafox Lane and Martin Hurst Road in unincorporated Leon County, Florida. The Permit will authorize construction of a storm water management system designed to serve the Project.

Ms. Diaz lives in the Palafox Preserve subdivision and timely filed an Amended Petition for Formal Proceedings before a Hearing Officer to challenge the Permit on the basis that her property will be adversely affected by storm water discharge authorized by the Permit. That case was assigned as Case No. 19-5831 and was heard by the undersigned pursuant to a contract between Leon County and the Division.

A final hearing in Case No. 19-5831 was held February 19 and 20, 2020, in Tallahassee, Florida. Following the final hearing, the parties filed their Proposed Recommended Orders, and the District timely filed a motion for attorney's fees and/or sanctions against Ms. Diaz and her counsel, Mr. Braswell, under sections 120.569 and 120.595. Palafox joined in and adopted that attorney's fees motion.

The undersigned issued a Recommended Order on May 18, 2020, finding that Ms. Diaz had not met her burden to prove that Palafox had not provided reasonable assurance that its proposed activities meet the conditions for

issuance set forth in the District's permitting regulations and handbook, and concluding that the Permit should be issued. As part of that Recommended Order, the undersigned reserved ruling on the motion for attorney's fees until a final order was issued. On June 25, 2020, the District issued its Final Order, adopting the Recommended Order *in toto*.

Palafox then timely filed its Renewed Motion for Attorneys' Fees and Sanctions on July 6, 2020. As the Final Order in Case No. 19-5831 had already been issued, the Renewed Motion was treated as a new, ancillary matter, and assigned Case No. 20-3014F.

A final hearing was held via Zoom videoconference on August 19, 2020, in Tallahassee, Florida. Before the final hearing, the parties agreed that only the issue of entitlement to fees and costs would be determined at that hearing. They further agreed that if entitlement to reasonable attorneys' fees and sanctions was found, the undersigned would subsequently hold an evidentiary hearing to determine the amount.

The parties agreed that the record for Case No. 19-5831 would serve as the record in the instant case. No further exhibits or evidence was presented at the final hearing. However, in addition to the underlying record, the undersigned officially recognized the following additional documents from related legal matters before the final hearing:

1. Final Judgment, *Evergreen Communities, Inc. v. Braswell*, No. 2015-CA-000765 (Fla. 2d Cir. Ct.);

2. Petition for Certiorari and Notice of Voluntary Dismissal, *Braswell v. Palafox*, No. 2018-CA-002209 (Fla. 2d Cir. Ct.); and

3. Defendant's Answer and Affirmative Defenses and Countersuit for Declaratory Judgment,

Palafox, LLC v. Diaz, Case No. 2019-CA-002758 (Fla. 2d Cir. Ct.).

After the final hearing, on motion by Ms. Diaz, the undersigned also officially recognized the following documents:[1]

1. Letter from Leon County to the Division to open Case No. 18-2734;

2. Amended Petition for Writ of Certiorari and Petition for Declaratory Judgment, *Braswell v. Palafox, LLC*, Case No. 2018-CA-002209 (Fla. 2d Cir. Ct.);

3. Notice of Voluntary Dismissal with Prejudice, *Braswell v. Palafox, LLC*, Case No. 37-2018-CA-002209 (Fla. 2d Cir. Ct.);

4. *Evergreen Communities, Inc. v. Palafox Pres. Homeowners' Ass'n, Inc.*, 213 So. 3d 1127 (Fla. 1st DCA 2017);

5. Final Order on Summary Judgment, *Evergreen Communities, Inc. v. Palafox Pres. Homeowners' Ass'n, Inc.*, Case No. 2015-CA-765 (Fla. 2d Cir. Ct.), rev. in *Evergreen Communities, Inc. v. Palafox Pres. Homeowners' Ass'n, Inc.*, 213 So. 3d 1127 (Fla. 1st DCA 2017); and

6. Complaint, *Palafox, LLC vs. Carmen Diaz*, Case. No. 2019-CA-2758 (Fla. 2d Cir. Ct.).

The proceeding was recorded and a one-volume Transcript of the Final Hearing was filed on September 2, 2020. The undersigned granted Petitioner's unopposed request for an extension of time to file proposed final

[1] Ms. Diaz also requested the undersigned take official recognition of the Notice of Final Agency Action Taken by the District in Case. No. 19-5831, and the Final Order issued in DOAH Case No. 18-2734 by the Leon County Board of County Commissioners. Those documents, however, were already part of the record in Case No. 19-5831.

orders. The parties timely filed Proposed Final Orders, which have been considered by the undersigned in preparing this Final Order.[2]

FINDINGS OF FACT

1. Palafox is a Florida limited liability company and was the applicant for the Permit in Case No. 19-5831. Palafox owns Lot 1, Block B, of the Palafox Preserve Subdivision, the six-acre property on which the Project will be developed.

2. Ms. Diaz is the owner of Lot 18, Block A, of the Palafox Preserve Subdivision. Petitioner is a member of the Palafox Preserve Homeowners Association, Inc. (the "HOA"). The HOA is not a party to this litigation. The HOA has previously agreed not to challenge any permits sought by Palafox for the development of the project.

3. Mr. Braswell is not a party to this matter. He represented Ms. Diaz through the Final Order issued by the District in Case No. 19-5831. Palafox's Renewed Motion for Fees sought attorney's fees and/or sanctions against Mr. Braswell for his role in that case, as allowed under section 120.569(2)(e).

Ms. Diaz's Challenge to the Project

4. The Project consists of a 36-unit multi-family residential development proposed to be built on Lot 1, Block B, of the Palafox Preserve Subdivision. The Project encompasses approximately 2.68 acres of Lot 1, Block B. The Project lies adjacent to, and immediately west of, Martin Hurst Road and adjacent to, and immediately south of, Palafox Lane. The remainder of

[2] Mr. Braswell also filed a Proposed Final Order and Amended Proposed Final Order, which were not authorized and have not been considered by the undersigned in preparing this Final Order. Mr. Braswell is not a party to this proceeding and did not become a party thereto by merely appearing at the final hearing to make some argument on his own behalf. He did not move to intervene in this proceeding, or otherwise obtain party status, not even by ore tenus motion at the Final Hearing. Mr. Braswell did not file a notice of appearance and did not attend the Final Hearing as counsel for Ms. Diaz. Furthermore, Mr. Braswell did not request permission to submit a Proposed Final Order.

Palafox's property runs to the west of the Project and south of Palafox Lane, and is located within a perpetual conservation easement.

5. Ms. Diaz's property is a residential lot located west of, and not adjacent to, Palafox's property. An approximate nine-acre conservation easement owned by the HOA lies between Ms. Diaz's property and Palafox's property. A portion of Petitioner's back yard is located within the conservation easement.

6. Approximately seven acres within the conservation easement are wetlands. The conservation easement, including the wetlands, straddles the boundary between Block A and Block B, with about two-thirds in Block A, for the most part owned by the HOA, and one-third in Block B, wholly owned by Palafox.

7. Palafox sought an environmental resource permit from the District to construct storm water management facilities (SWMFs) to serve the Project. The SWMFs to be authorized by that Permit are on Palafox's property.

8. Palafox's property, the conservation easement and wetlands, and Ms. Diaz's property, are all located within the same closed basin. This means that storm water within the basin will generally not flow out of the basin in all storm events up to, and including, a 100-year, 24-hour storm.

9. On October 30, 2019, following the District's notice of intent to issue the Permit, Ms. Diaz filed an Amended Petition for Formal Proceedings Before a Hearing Officer ("Amended Petition"). In the Amended Petition, Ms. Diaz challenged the District's issuance of the Permit alleging that the Project will (1) have adverse water quantity impacts to adjacent lands; (2) cause adverse flooding to on-site or off-site properties; (3) cause adverse impacts to existing surface water storage and conveyance capabilities; and (4) adversely impact the value and function of wetlands and other surface waters. She also alleged that the wetland had not been properly delineated previously, and that an older delineation was no longer valid.

10. Specifically, Ms. Diaz alleged that the "proposed [storm water] system results in a massive change in the amount of storm water being discharged

from the applicant's site directly onto Petitioner's property which leads to adverse impacts on her property."

11. On November 19, 2019, the Final Hearing was scheduled for February 19 and 20, 2020.

12. Ms. Diaz was deposed on January 17, 2020, almost three months after filing her Petition, and two months after the Final Hearing date was set.

13. The deposition revealed that Ms. Diaz was not the least bit informed of the Project. Ms. Diaz had not reviewed the Permit, and believed that the Permit authorized Palafox to build the Project, rather than the storm water treatment system. Ms. Diaz had not seen the site plans, had no understanding of what the Project would look like, and admitted she had done nothing to learn about the Project.

14. In fact, Ms. Diaz testified repeatedly at her deposition that she simply does not want the Project built, regardless of whether it would actually impact her property or the wetlands, and regardless of what kind of development it is. She does not want Palafox's property developed, in any capacity, and wants it to stay "the way it is now."

15. Ms. Diaz conducted no written discovery nor any depositions, and did not hire an expert until approximately one month before the final hearing. That expert, Mr. Carswell, had never visited the site. Although Mr. Carswell conducted a storm water analysis, Mr. Carswell conceded that Mr. Braswell prepared and sent him a ten-page report and asked him to consider it as Mr. Carswell's opinion report.

16. In reviewing and adopting that report, Mr. Carswell admitted that he did not do the type of analysis that he would have if he wanted to determine the incremental addition of storm water to a closed basin. Instead, he did a simple water balance equation. Mr. Carswell testified that he had never before used this type of analysis to support permitting for a storm water pond and that if he was going to try to predict the incremental contribution of

storm water discharge from a project into a closed basin, he would utilize a model similar to the one submitted by Palafox in support of this Project.

17. The undersigned found Mr. Carswell's analysis was not a professionally-acceptable method for determining whether the Project met the standards for the Permit.

18. In addition to Mr. Carswell, Petitioner offered the testimony of four other witnesses at the final hearing. None were able to offer any evidence that Palafox failed to provide reasonable assurance that the project:

> a. Will not cause adverse water quantity impacts to receiving waters and adjacent lands;
>
> b. Will not cause adverse flooding to on-site or off-site property;
>
> c. Will not cause adverse impacts to existing surface water storage and conveyance capabilities; and
>
> d. Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters.

19. The testimony of two of those witnesses, Mr. Songer and Mr. Stinson, was in transcript form and was actually given in DOAH case No. 18-2734. In that case, neither witness' testimony was accepted to defeat Palafox's site plan approved under the more stringent permitting requirements of Leon County. *See Braswell v. Palafox, LLC*, Case No. 18-2734 (Fla. DOAH Aug. 31, 2018; Leon Cty. Bd. of Cty. Comm's (Sept. 24, 2018)).

20. The remainder of Ms. Diaz's witnesses' testimony was equally ineffective. Mark Cooper, the Project engineer, testified that the Project would raise the water level in the wetland by .04 feet in a 100 year, 24-hour storm event, which he classified as a negligible impact. Mr. Cooper's testimony confirmed that of Palafox's expert engineer, Mark Thomasson, who classified that increase as "de minimus." Cheryl Poole, Ms. Diaz's other

witness and an engineer who worked on a prior project on the property, merely testified to conditions that existed a decade prior that are not relevant to the Project. In short, Ms. Diaz presented no credible evidence at all that the Project would negatively impact either the wetlands or her property.

21. After the final hearing, the undersigned administrative law judge issued a Recommended Order, adopted *in toto* by the District, concluding that Ms. Diaz did not carry her burden to prove that Palafox failed to provide reasonable assurances that the Project will not (a) cause adverse water quantity impacts to receiving waters and adjacent lands; (b) cause adverse flooding to on-site or off-site property; (c) cause adverse impacts to existing surface water storage and conveyance capabilities; and (d) adversely impact the value and functions provided to fish and wildlife and listed species by wetlands and other surface waters.

Mr. Braswell's Prior Challenges to the Project

22. Mr. Braswell has been involved in challenges to the Project for over five years. In those challenges, he has represented his parents, the HOA, Ms. Diaz, or some combination of those parties.

23. In 2015, Mr. Braswell filed an administrative challenge on behalf of his parents—Wynona and Robert Braswell (the "Braswells"), who live in the Palafox subdivision and are members of the HOA. *See Braswell v. Palafox, LLC* (Fla. DOAH Case No. 15-1190). In that administrative challenge, the Braswells challenged Leon County's approval of the Project site plan.[3]

24. The Braswells raised many of the same factual issues regarding the wetlands and storm water impacts that Mr. Braswell later raised again in Ms. Diaz's challenge to the Permit. The Braswells also raised the issues that

[3] Mr. Braswell admitted that when he filed that case, he "didn't know very much about the [P]roject," "didn't know the rules" for Leon County's site plan approval, and that he and his parents "didn't realize kind of what [they] were getting [them]selves into."

the Project violated a private covenant in the subdivision's governing documents, which was beyond the Division's jurisdiction. Accordingly, Palafox filed a civil suit for declaratory judgement to resolve that claim. In the interim, jurisdiction of Case No. 15-1190 was relinquished to the County without prejudice to refer it again to the Division should the civil suit not dispose of the issues raised in the administrative case. *See Braswell v. Palafox, LLC*, Case No. 15-1190 (Ord. Rel. Jsd. May 14, 2015).

25. After an initial grant of summary judgment for the Braswells and a reversal by the First District Court of Appeal, the trial court entered a final judgment for Palafox. (Final Judgment, *Evergreen Communities, Inc. v. Braswell*, No. 2015-CA-000765 (Fla. 2d Cir. Ct. 2017)).

26. After the civil suit was resolved, Mr. Braswell renewed his parents' challenge to the site plan. *See Braswell v. Palafox*, LLC, Case No. 18-2734 (Fla. DOAH Aug. 31, 2018; Leon Cty. Bd. of Cty. Comm's Sept. 25, 2018). As in the underlying Permit challenge, Mr. Braswell argued that the wetlands were not correctly delineated, and that the project would cause the wetland area to overflow and burden the "downstream" storm water facilities owned by the residential homeowners.

27. While the County did not issue a storm water permit for the Project, approval of the site plan required a determination that the Project meets the County's environmental code requirements. The County's standard for volume control requires the runoff volume in excess of the pre-development runoff volume to be retained for all storm events up to a 100-year, 24-hour duration storm. That standard is more stringent than the District's requirement to provide "reasonable assurances" that the Project will not cause adverse water quantity impacts to receiving waters and adjacent lands; will not cause adverse flooding to on-site or off-site property; will not cause adverse impacts to existing surface water storage and conveyance capabilities; and will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters.

28. In the site plan challenge, the administrative law judge found that the Project was consistent with the Code requirements and specifically found as follows:

> - the Project's proposed storm water system will not significantly impact the conservation easement wetlands and will not cause flooding or other adverse impacts to downstream areas.
>
> - no statute, ordinance, rule or regulation requires a wetland to be re-delineated after it has been identified and placed in perpetual preservation under a conservation easement and that the argument to the contrary "would lead to the absurd result of re-surveying and re-recording allegedly 'perpetual' conservation easements every time a lot was developed" within a plat.

Id. at R.O. ¶¶ 37 & 51.

29. In yet another case arising from this dispute, in 2016, Mr. Braswell's father filed a formal complaint against the Project engineer with the Florida Board of Professional Engineers. Mr. Braswell submitted additional information in support of that proceeding. *See In re Mark Cooper, P.E.*, Case No. 2016052464 (Fla. Bd. of Prof'l. Eng'rs Mar. 14, 2017).

30. The Closing Order in that case found no probable cause of a violation by Palafox's professional engineer related to the storm water system after the independent reviewer concluded that, based on the materials submitted by Petitioner's counsel, "there should be no adverse surface water impacts to adjacent property" from the Project. *Id*. at ¶ 1.

31. After the resolution of the civil suit and prior administrative challenges, Palafox, the HOA, and the Braswells entered into a settlement agreement. Under that agreement, the HOA and the Braswells agreed they would not challenge the Project any further, as long as it complied with the site plan that the County had approved. Mr. Braswell signed that agreement on behalf of his parents as attorney in fact.

32. Palafox, believing that Ms. Diaz was bound by that settlement agreement as a member of the HOA, and that she had breached the agreement by filing the Amended Petition in the Permit challenge, filed a civil suit in Leon County Circuit Court. *See Palafox, LLC v. Diaz*, Case No. 2019-CA-002758 (Fla. 2d Cir. Ct.). Mr. Braswell, representing Ms. Diaz in that suit as well, filed a counterclaim, subsequently voluntarily dismissed, in which he again raised the issues of the wetlands delineation and downstream flooding. (Def's Ans. and Aff. Def. and Countersuit for Dec. Jdmt. at pp. 6-9).

33. At no point between the resolution of the prior litigation regarding this Project and filing the Permit challenge did Mr. Braswell obtain new evidence or expert opinion to suggest that the Project would not meet the District's more lenient standards for granting an environmental resource permit. Nor did he adduce evidence at hearing that would lead an administrative law judge to reach a different conclusion from Judge Ffolkes—that the project would not cause adverse impacts to downstream owners, that the Project would not adversely impact the wetlands, and that no new wetland delineation was required.

CONCLUSIONS OF LAW

34. Palafox seeks attorney's fees and costs under section 120.569(2)(e), alleging that Ms. Diaz and her attorney, Mr. Braswell, filed the Amended Petition in this case for an "improper purpose."

35. Section 120.569(2)(e) provides:

> All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for

> frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

36. In determining whether a party is entitled to statutory attorney's fees under section 120.569(2)(e), the Division must evaluate whether Petitioner had an "improper purpose" based on an objective standard. *See Procacci Comm'l Realty, Inc. v. Dep't of HRS*, 690 So. 2d 603, 608 n.9 (Fla. 1st DCA 1997); *Friends of Nassau Cty., Inc. v. Nassau Cty.*, 752 So. 2d 42, 50-51 (Fla. 1st DCA 2000); *Blanco v. Sw. Fla. Water Mgmt. Dist.*, Case No. 08-1972 at ¶¶ 73-75 (Fla. DOAH Nov. 17, 2008; Fla. SFWMD Dec. 8, 2008).

37. The court in *Procacci* explained the objective standard as follows:

> Eschewing a subjective good faith-bad faith test, *see Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194 (7th Cir. 1985), the *Mercedes* court concluded that a finding of improper purpose could not stand 'if a reasonably clear legal justification can be shown for the filing of the paper.' 560 So. 2d at 278. The use of an objective standard creates a requirement to make a reasonable inquiry regarding pertinent facts and applicable law. In the absence of 'direct evidence of the party's and counsel's state of mind, we must examine the circumstantial evidence at hand as ask, objectively, whether an ordinary person standing in the party's or counsel's shoes would have prosecuted the claim.' *Pelletier v. Zweifel*, 921 F.2d 1465, 1515 (11th Cir. 1991).

Id. (citing *Mercedes Lighting and Elec. Supply, Inc. v. State*, 560 So. 2d 272, 277 (Fla. 1st DCA 1990).

38. Whether section 120.569(2)(e) authorizes sanctions for the Amended Petition in this case turns, not on the question of the party and her attorney's

motivation in filing the paper, but on the question of whether the signer could have concluded that a justiciable controversy existed under the pertinent statute and regulations. If, after reasonable inquiry, a person who reads, then signs, a pleading had "reasonably clear legal justification" to proceed, sanctions are inappropriate. *Procacci*, 690 So. 2d at 608 n.9; *Mercedes*, 560 So. 2d at 278.

39. The facts that Ms. Diaz could not remember having read the Amended Petition, relied upon facts provided by her counsel, and made no independent inquiry on her own, are not sufficient factual bases alone to determine that sanctions are appropriate. *See Anderson v. St. Pete Beach*, Case No. 17-1884 (Fla. DOAH Feb. 20, 2018). Nor is it sufficient that the claims are weak or the Amended Petition is not well-founded. *Friends of Nassau*, 752 So. 2d at 52.

40. The type or extent of the inquiry made by counsel is a determinative factor. If "counsel conducted a reasonable inquiry," counsel may not be sanctioned, even for a complaint that is not well-founded. *Id.* (citing *Keegan Mgmt. Co., Securities Litigation v. Keegan Mgmt. Co.*, 78 F.3d 431, 434 (9th Cir. 1996)). For example, where counsel consulted with an expert and received an oral opinion from a doctor who examined claimants prior to filing the action, counsel conducted a "reasonable inquiry." *Id*.

41. In the underlying Permit challenge, Mr. Braswell did not make a reasonable inquiry of the facts and applicable law prior to filing the Amended Petition on Ms. Diaz's behalf. Little inquiry was actually needed, as Mr. Braswell had first-hand knowledge of the facts relating to the delineation of the wetland on the Property and the storm water retention facility proposed for the Project, based on his involvement in the site plan challenge, brought on behalf of his parents, and the engineering licensing board complaint brought by his father.

42. Likewise, little inquiry was needed on the applicable law. The prior site plan challenge resulted in a determination that the proposed storm water

system for the Project "will not significantly impact the conservation easement wetlands and will not cause flooding or other adverse impacts to downstream areas." The Florida Board of Professional Engineers probable cause panel found that there "should be no adverse surface water impacts to adjacent property" from the storm water system designed by the Project engineer. Mr. Braswell could have reasonably determined, prior to filing the Amended Petition, that the standard for storm water treatment retention required by the County was more stringent than that of the District. In fact, based on the Amended Petition, Mr. Braswell was aware that the Project had to meet the District standard of providing "reasonable assurances" regarding the Project's impact, including flooding, on adjacent and downstream properties and the wetland area. It appears that Mr. Braswell pursued the Amended Petition regardless of the knowledge that the District standard was less stringent than the County's standard. He did so utilizing the same experts who testified unpersuasively at the prior hearing, and offered only one additional witness, Mr. Carswell, for whom Mr. Braswell prepared and provided his report, and who admitted the type of analysis undertaken was not appropriate for purposes of demonstrating compliance with the Permit requirements.

43. Based on an objective review of the circumstances that existed at the time the Amended Petition was filed, it is determined that the Amended Petition was filed for an improper purpose, pursuant to section 120.569(2)(e).

44. However, section 120.569(2)(e) is aimed at deterring parties from filing "pleadings, motions, and other papers" for improper purposes. The statute is not intended to shift fees and costs to compensate the prevailing party. The statute is aimed at the conduct of counsel, the represented party, or both, and not the outcome of the proceeding. *See Mercedes*, 560 So. 2d at 276.

45. A party seeking sanctions under section 120.569(2)(e) is required to take action to mitigate the amount of resources expended by the party in defense of the pleading that the party claims is filed for an improper purpose.

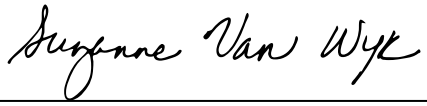
Id. at 277. The party must give prompt notice to the opposing party and allow the undersigned to promptly punish an offending party. The purpose of the statute is not well served if an offending pleading is fully litigated and the offender is not punished until the end of the administrative proceeding. *Id.*

46. Here, although Palafox knew, or should have known that the Amended Petition was filed for an improper purpose, it did not file the Motion for Attorney's Fees until the date on which it filed its Proposed Recommended Order—six months after the Amended Petition was filed. Nor did Palafox file a timely Motion to Dismiss the Amended Petition. Palafox did nothing to mitigate the amount of resources it expended in defense of the Amended Petition. A delay in seeking sanctions militates against granting an award of attorney's fees under section 120.569(2)(e). *See Spanish Oaks of Cent. Fla. v. Lake Region Audubon Soc'y*, Case No. 05-4644F (Fla. DOAH July 7, 2006); *Beverly Health and Rehab. Servs.-Palm Bay v. Ag. for Health Care Admin.*, Case No. 02-1297F (Fla. DOAH Apr. 25, 2003).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner is not entitled to fees and costs pursuant to section 120.569(2)(e).

DONE AND ORDERED this 30th day of October, 2020, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of October, 2020.

COPIES FURNISHED:

W. Douglas Hall, Esquire
Carlton Fields, P.A.
215 South Monroe Street, Suite 500
Post Office Drawer 190
Tallahassee, Florida 32301
(eServed)

James E. Parker-Flynn, Esquire
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, Florida 32302
(eServed)

Nicholas D. Fugate, Esquire
Nicholas D. Fugate, P.A.
Post Office Box 7548
Tallahassee, Florida 32314
(eServed)

Brett J. Cyphers, Executive Director
Northwest Florida Water Management District
81 Water Management Drive
Havana, Florida 32333-4712
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.