

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

STEVE HILL and GUY VANDOREN,

Petitioners,

DOAH Case No. 19-6593

v.

SJRWMD F.O.R. No. 2019-12

SJR 2020-01

BISHOP OF THE DIOCESE ST. AUGUSTINE,
A CORPORATION SOLE, and
ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

Respondents.

FINAL ORDER

This matter involves a challenge by Steve Hill and Guy Vandoren (“Petitioners”) to Environmental Resource Permit No. 120231-3 issued by Respondent, St. Johns River Water Management District (“District”), to Respondent, Bishop of the Diocese St. Augustine (“Permittee”). The matter having been referred to the Division of Administrative Hearings and assigned to the Honorable Administrative Law Judge, Francine M. Ffolkes (“ALJ”), comes before me now upon the ALJ’s issuance of a Recommended Order of Dismissal (“Recommended Order”).

1. On December 20, 2019, the District filed a Motion to Dismiss the petition filed by Petitioners. The Permittee joined in the District’s motion.

2. On January 9, 2020, the ALJ issued a Recommended Order of Dismissal in this case, a copy of which is attached hereto as Exhibit “A.”

3. The Recommended Order advised the parties that they had 15 days to file exceptions to the Recommended Order with the District. On January 10, 2020, the District also

sent all parties a letter advising the parties of their right to file exceptions to the Recommended Order, a copy of which is attached hereto as Exhibit "B."

4. Neither the Petitioners, the District, nor the Permittee submitted exceptions to the Recommended Order. Accordingly, it is hereby

ORDERED that:

The Recommended Order is ADOPTED, and the case is DISMISSED.

DONE AND ORDERED this 30th day of January, 2020, in Palatka, Florida.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: 
ANN B. SHORTELE, PH.D.
EXECUTIVE DIRECTOR

RENDERED this 30th day of January, 2020.

BY: Sandra Bertram
SANDRA BERTRAM
DISTRICT CLERK

Copies to:

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Counsel for Petitioners

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Counsel for Respondent Bishop of the Diocese of St. Augustine

Mary Ellen Winkler, Esq.: mwinkler@sjrwmd.com
St. Johns River Water Management District
4049 Reid Street, Palatka, Florida 32177
Counsel for Respondent St. Johns River Water Management District

Notice of Rights

1. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by final District action may seek review of the action in the district court of appeal by filing a notice of appeal under Rule 9.110, Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.

2. A District action or order is considered “rendered” after it is signed on behalf of the District and is filed by the District Clerk.

3. Failure to observe the relevant time frame for filing a petition for judicial review as described in paragraph 1 will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Order and Notice of Rights was furnished to:

M. Stephen Stanfield, Esq.: m.stephen.stanfield@gmail.com
814 A1A North, Suite 105, Ponte Vedra Beach, Florida 32082
Counsel for Petitioners

Ellen Avery-Smith, Esq.: eaverysimth@rtlaw.com
Rogers Towers, P.A., 100 Whetstone Place, Suite 200
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Counsel for Respondent Bishop of the Diocese of St. Augustine

Mary Ellen Winkler, Esq.: mwinkler@sjrwmd.com
St. Johns River Water Management District
4049 Reid Street, Palatka, Florida 32177
Counsel for Respondent St. Johns River Water Management District

by **Electronic Mail** on this 30th day of January 2020.



Karen C. Ferguson, Esquire
Fla. Bar No. 0011799
Asst. General Counsel
St. Johns River Water Management District
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STEVE HILL AND GUY VANDOREN,

Petitioners,

vs.

Case No. 19-6593

BISHOP OF THE DIOCESE ST.
AUGUSTINE, A CORPORATION SOLE,
AND ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

Respondents.

_____ /

RECOMMENDED ORDER OF DISMISSAL

This cause came before the undersigned on the Respondent St. Johns River Water Management District's "District" Motion to Dismiss, filed on December 20, 2019. The Respondent, Bishop of the Diocese St. Augustine "Applicant", joined in the District's motion. The time period for filing a response under Florida Administrative Code Rule 28-106.204 passed without the filing of a response by the Petitioners, Steve Hill and Guy Vandoren.

Background

The proposed environmental resource permit "ERP" at issue in this proceeding would authorize construction of a surface water management system to serve a tiered outdoor worship space and parking improvements at an existing church site in St. Augustine "Mission".

Legal Standards

In reviewing a motion to dismiss, the undersigned must assume the allegations in a petition are true, and apply every reasonable inference in the Petitioners' favor. See Curd v. Mosaic Fertilizer, LLC, 39 So. 3d 1216, 1222 (Fla. 2010); Dep't of HRS v. S.A.P., 835 So. 2d 1091, 1094 (Fla. 2002). In addition, the undersigned's review is confined to the allegations within the "four corners" of a petition and its attachments. See Santiago v. Mauna Loa Invs., LLC, 189 So. 3d 752, 756 (Fla. 2016).

Motion to Dismiss

Substantial interests standing

The Respondents argue that the substantial interests asserted by the Petitioners fail to meet the two-pronged test for standing established in Agrico Chemical Corporation v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981). Under the two-pronged test a petitioner is considered to have a substantial interest in the outcome of the proceeding, i.e., standing, if he shows: "1) that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a section 120.57 [,Florida Statutes,] hearing and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect." Id. at 482.

Standing is a forward-looking concept, not to be confused with the merits. In substantial interests cases, the question is whether the party's substantial interests "could be" affected by the proposed agency action, or whether the party's substantial interests "could reasonably be affected by the proposed activities." See Palm Beach Cnty. Env'tl. Coal. v. Dep't of Env'tl. Prot., 14 So. 3d 1076, 1078 (Fla. 4th DCA 2009); St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011) (citing Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co., 18 So. 3d 1079, 1084 (Fla. 2d DCA 2009)).

The Petitioners' Request for Formal Administrative Hearing (Petition) challenged the proposed ERP. The Petitioners allege that their substantial interests would be affected because they "live in the neighborhood immediately to the South of the Mission grounds," that plans for the space "will affect the Petitioners['] enjoyment and lifestyles," and will "result in more flooding into the neighborhood to the Southeast of the Mission," which will "lead to a reduction in value for Petitioners' real estate." The Petitioners' allegations, taken as true, do not constitute pure speculation or conjecture. See K.M. v. Fla. Dep't of Health, 237 So. 3d 1084 (Fla. 3d DCA 2017).

In addition, except for real estate values, the activities alleged by the Petitioners are within the zone of interest or statutory scheme that is the subject of this administrative proceeding. See St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051 (Fla. 5th DCA 2011); Reily Enters., LLC v. Dep't of Env'tl. Prot., 990 So. 2d 1248 (Fla. 4th DCA 2008). Thus, the Petitioners' allegations demonstrate standing.

Disputed issues of material fact

The merits of the Petitioners' challenge were the disputed issues of material fact and law that must appear on the face of the Petition. See Fla. Admin. Code R. 28-106.201(2)(d), (e), (f). As the District pointed out in its motion to dismiss, the only dispute alleged was a lack of documentation of "the applicant's real property interest," and citation to section 4.2.3(d) of the Environmental Resource Permit Applicant's Handbook, Volume 1. See also Fla. Admin. Code R. 62-330.060(3). More specifically, the Petitioners alleged that "[t]here is no evidence to support a real property interest over either Parcel 1920800000 or Parcel 1959600000."

When there are conflicts between the allegations and documents attached as exhibits, the plain language of the documents control. See Health Application Sys., Inc. v. Hartford Life and Accident Ins. Co., 381 So. 2d 294, 297 (Fla.

1st DCA 1980). The exhibits to the Petition include "TRIM Notice[s]" from the St. Johns County property appraiser's website showing that "Parcel 1920800000" and "Parcel 1959600000" are owned by "Bishop of the Diocese St. Aug 100%." The conflict between the Petition's allegations and the plain language of the exhibits, is controlled by the plain language of the exhibits. See Id. Thus, the alleged dispute that would warrant reversal or modification of the District's proposed ERP, is non-existent. See Geico Gen. Ins. Co. v. Graci, 849 So. 2d 1196, 1199 (Fla. 4th DCA 2003).

Having reviewed the pleadings and being otherwise advised, it is

RECOMMENDED that the St. Johns River Water Management District enter a final order of dismissal.

DONE AND ENTERED this 9th day of January, 2020, in Tallahassee, Leon County, Florida.



FRANCINE M. FFOLKES
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of January, 2020.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

Karen Ferguson

From: Kimberly Driggers
Sent: Friday, January 10, 2020 1:30 PM
To: 'eaverysmith@rtlaw.com'; 'm.stephen.stanfield@gmail.com'; Mary Ellen Winkler
Cc: Bill Abrams; Karen Ferguson
Subject: Steve Hill and Guy Vandoren vs. Bishop of the Diocese St. Augustine, a Corporation Sole, and SJRWMD; DOAH Case No. 19-6593
Attachments: Letter to Parties.pdf

I have attached a copy of a letter regarding the above-reference matter. A hard copy of the letter will follow via U.S. Mail.

Kim Driggers
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www.sjrwmd.com/epermitting



St. Johns River Water Management District

Ann B. Shortelle, Ph.D., Executive Director

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January 10, 2020

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**Re: Steve Hill and Guy Vandoren vs. Bishop of the Diocese St. Augustine, a Corporation Sole, and SJRWMD;
DOAH Case No. 19-6593;
SJRWMD F.O.R. No. 2019-12**

Dear Parties:

My name is Karen Ferguson and I am the attorney who will be preparing the proposed Final Order and will serve as the designated Governing Board advisor from this point forward. I will not be representing District staff. I am writing you because yesterday, Administrative Law Judge Francine M. Ffolkes filed a Recommended Order with the District in the above referenced case.

You may file exceptions to the Recommended Order pursuant to section 120.57(1)(k) of the Florida Statutes. Should you file exceptions, please keep in mind that section 120.57(1)(k) provides, "[a]n agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page

GOVERNING BOARD

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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."

Exceptions to the Recommended Order must be filed with the District Clerk at District Headquarters in Palatka no later than 5:00 p.m. on Friday, January 24, 2020. Section 120.57(1)(k), F.S.; Rule 28-106.217(1), Florida Administrative Code (F.A.C.).

Any party may file responses to another party's exceptions within ten days from the date the exceptions were filed with the District. Responses to exceptions to the Recommended Order must be filed no later than ten days after the exceptions are filed with the District. Rule 28-106.217(3), F.A.C. No additional time is added to the time limits to file exceptions or responses if served by mail. Rule 28-106.217(4), F.A.C.

The filing date for documents filed by hand delivery or mail shall be the date the District Clerk receives the complete document. The filing date for documents filed by e-mail to Clerk@sjrwmd.com shall be the date the District Clerk receives the complete document in the form of a PDF file in a manner capable of being stored and printed. Receipt by the District Clerk after 5:00 p.m. shall be considered filed as of 8:00 a.m. on the next regular business day. A party who elects to file a document by e-mail is responsible for any delay, disruption, or interruption of the electronic signals and readability of the document and accepts the full risk that the document may not be properly filed with the District Clerk as a result. The District does not accept faxed filings. Please refer to section (5) of the SJRWMD Statement of Agency Organization, which may be obtained from the District's website at <https://www.sjrwmd.com/static/Statement-of-Agency-Organization-and-Operation.pdf> or upon request to the Agency Clerk, for complete information regarding filing requirements.

Pursuant to section 373.079(4)(a), F.S., the Governing Board has delegated its authority to take final action on permit applications and petitions for variances of permitting requirements to the Executive Director while retaining authority to take final action on a denial of such applications or petitions. See, section (8), District Policy 120, *Governing Board Delegations* (available upon request). This matter will be presented to the Governing Board for final action only if the proposed final order, prepared by the designated Board advisor, recommends denial; however, if the final order recommends approval, the Executive Director is delegated the authority to take final action. If this matter is scheduled for the Governing Board, you will have an opportunity to provide oral argument regarding exceptions to the Recommended Order and a proposed procedure will be discussed before that time.

Letter to Parties
DOAH Case No. 19-6593
Page 3 of 3

You are reminded that Section 120.66, *Florida Statutes*, restricts communication with the agency head or designee who is involved in the decisional process in the period between issuance of the Recommended Order and entry of a Final Order. Thank you for your attention and cooperation. If you have any questions, please contact me at (386) 329-4288.

Sincerely,

A handwritten signature in blue ink that reads "Karen C. Ferguson". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Karen C. Ferguson
Assistant General Counsel
Office of General Counsel

cc: Bill Abrams, General Counsel