

STATE OF FLORIDA
NORTHWEST FLORIDA TRANSPORTATION CORRIDOR AUTHORITY

CLEAN WATER NETWORK
OF FLORIDA, INC., LINDA L.
YOUNG

Petitioners,

v.

CASE NO:

NORTHWEST FLORIDA
TRANSPORTATION CORRIDOR
AUTHORITY, FLORIDA DEPARTMENT
OF TRANSPORTATION

Respondents.

**FINAL ORDER DENYING PETITION FOR
FORMAL ADMINISTRATIVE PROCEEDING**

THIS CAUSE coming before the Northwest Florida Transportation Corridor Authority (the "Authority") by way of a Petition for Formal Administrative Proceeding of Proposed Agency Action (the "Petition") by the Clean Water Network of Florida, Inc. and Linda L. Young (the "Clean Water Network" and "Young" or the "Petitioners") and having considered said Petition:

IT IS THEREUPON Ordered and Adjudged as Follows:

1. On April 5, 2007, the Authority adopted its Master Plan, attached to this Final Order as Exhibit A.

2. The goals and objectives of the master plan are to:

[I]dentify areas of the corridor where mobility, traffic safety, and efficient hurricane evacuation need to be improved; evaluate the economic development potential of the corridor and consider strategies to develop that potential; develop methods of building partnerships with local governments, other state and federal entities, the

private-sector business community, and the public in support of corridor improvements; and to identify projects that will accomplish these goals and objectives.

§ 343.82(3)(a), Fla. Stat. (2006).

3. On April 19, 2007, the Clean Water Network and Young submitted their Petition requesting a formal administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. The Petition challenges the Master Plan alleging that it is an unpromulgated rule and an “invalid exercise of delegated legislative authority.” (Petition, ¶ 6). Moreover, it is asserted that the Authority cannot “prove up” the alleged unadopted rule. (Petition, ¶ 22-26).

4. More importantly for purposes of this Final Order, Petitioners assert that their interests will be “substantially and adversely affected” by the adoption of the Master Plan. (Petition, ¶¶ 11 & 12). Specifically, it is alleged that the members of the Clean Water Network:

[W]ill be adversely and substantially affected by the pollution that *will affect* the waters they currently use for swimming, canoeing, diving, kayaking, and boating. They *will be* adversely and substantially affected by the woods that *will be* destroyed which they currently use for hunting and bird-watching.

(Petition, ¶ 12(a)) (emphasis added). Young is allegedly harmed in much the same way as it is alleged that she is “an avid hiker, kayaker, canoeist and swimmer. Ms. Young’s use of these waters and protected lands *will be* adversely affected by the construction of the proposed roads.” (Petition, ¶ 12(b)) (emphasis added).

5. The Petition also alleges that Young and the members of the Clean Water Network are affected in the following ways:

(a) Several of the proposed roadways threaten private

and public conservation easements worth millions of dollars (e.g., Projects numbered 8, 3, 38, 40)

- (b) The entire plan is strictly a road building exercise with no consideration given to development of alternative modes of transportation.
...
- (c) Little consideration was given to the very sensitive environmental features and wildlife pathways that several of the proposed roads would cross.
...
- (d) Growth management implications have not been assessed, especially for new road development.
...
- (e) The adopted plan appears to have been developed without adequate coordination and integration with comprehensive plans, metropolitan planning organization plans, FDOT corridor plans, and land holdings controlled by the Trustees of the Internal Improvement Trust Fund, and leaves little or no opportunity for the public to challenge anything.
- (f) The adopted plan does little or nothing to alleviate traffic safety issues on U.S. Hwy 98.
- (g) The adopted plan will unnecessarily affect private property rights.

(Petition, ¶ 11(a)-(g)).

6. The issue of whether a party has standing to seek a formal administrative hearing is a question of law. Mid-Chattahoochee River Users v. Fla. Dep't of Environmental Protection, 948 So. 2d 794, 796 (Fla. 1st DCA 2006). The statutory authority relevant to whether a party has standing to seek a formal administrative hearing is Section 120.569(1), Florida Statutes. It provides, in pertinent part, that “[t]he provisions of this section apply in all proceedings in which the *substantial interests* of a party are determined by an agency” § 120.569(1), Fla. Stat. (emphasis added).

7. Case law has interpreted Section 120.569(1) to require that “before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer *injury in fact* which is of *sufficient immediacy* to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.” Agrico Chemical Co. v. Dep’t of Env’tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981); Village Park Mobile Home Ass’n, Inc. v. Dep’t of Bus. Regulation, 506 So. 2d 426, 430 (Fla. 1st DCA 1987) (emphasis added).¹ “Agrico requires that a party show that he will suffer an immediate injury as a result of the agency action.” Village Park, 506 So. 2d at 432. The First District Court of Appeal summarized the showing that must be made by a petitioner to satisfy the injury in fact standard as follows:

[A]bstract injury is not enough. The injury *or threat of injury* must be both *real and immediate, not conjectural and hypothetical*. A petitioner *must allege* that he has sustained or is immediately in danger of sustaining some direct injury as a result of the challenged official conduct.

* * *

Accordingly, our construction of Agrico, Firefighters, and Jerry leads us to the conclusion that a petitioner can satisfy the injury-in-fact standard set forth in Agrico *by demonstrating in his petition* either: (1) that he had *sustained actual injury in fact* at the time of filing his petition; or (2) that he is *immediately in danger of sustaining some direct injury as a result of the challenged agency’s action*.

Village Park, 506 So. 2d at 433 (emphasis added).

¹ Clearly, the association standing requirements articulated in Florida Home Builders Ass’n v. Dep’t of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982) apply to the Clean Florida Network. See Farmworker Rights Org. v. Dep’t of Health and Rehabilitative Services, 417 So. 2d 753, 754-55 (Fla. 1st DCA 1983). However, the Florida Home Builders analysis does not alter or supercede that which was stated in Agrico. Int’l Jai-Alai Players Ass’n v. Fla. Pari-Mutuel Comm’n, 561 So. 2d 1224, 1225 n.1 (Fla. 3d DCA 1990).

8. The allegations in paragraph 12 of the Petition relate solely to future injury. Thus, the only manner in which these allegations can provide a basis for standing is if they demonstrate that Petitioners are immediately in danger of injury because of the Authority's adoption of the Master Plan. Petitioners have not and cannot make such a showing because of the nature of the Master Plan.

9. The allegations regarding how Young and the members of the Clean Water Network are substantially affected by the Master Plan state that they "will be" affected. (Petition, ¶ 12). However, there is no allegation in paragraph 12 regarding when Young or the members of the Clean Water Network will be affected. There is nothing demonstrating that they are in immediate danger of injury. No allegation provides that pollution will be released into the water or the woods will be destroyed in the immediate future. Nor is there any allegation that the roadways proposed in the Master Plan are going to be built in the immediate future.

10. Moreover, it is alleged that "[w]hile *the adopted Master Plan II does not establish final location or details of identified projects*, there does not appear to be a more appropriate opportunity delineated by Respondents for substantially affected citizens to request an administrative hearing pursuant to Chapter 120.569, F.S." (Petition, ¶ 3) (emphasis added). This allegation concedes there is no danger of Petitioners suffering an immediate injury. Without establishing a final location or details of identified projects, the adoption of the Master Plan by the Authority cannot possibly bring about the initiation of any project that may affect the Petitioners' alleged interests.

11. The Petitioners inability to allege an immediate injury and concession that the Master Plan does not establish the final location or details of identified projects is due

to the nature of the Master Plan itself. The Master Plan states on every map page the following:

This conceptual master plan is *for the planning purposes* of the Northwest Florida Transportation Corridor Authority and is *subject to future revisions* as contemplated by Section 343.80, Florida Statutes. Proposed corridor lines on this map are conceptual in nature and *reflect possible future corridor locations* which are subject to future review and analysis and *are not intended to reflect the actual location of future roadways*.

(emphasis added). The harm alleged in paragraph 12 of the Petition to Young and the members of the Clean Water Network can only occur upon implementation of the projects in the Master Plan. Since the adoption of the Master Plan does not result in the projects being initiated and only reflects possible future corridor locations, the harms alleged by Petitioners are not real and immediate but conjectural and hypothetical.

12. The circumstances in the instant case are similar to those faced in Village Park. There, the petitioners filed a Petition to Initiate Formal Proceedings challenging the Department of Business Regulation's ("DBR") approval of a prospectus submitted to DBR by the owner of a mobile home park. In doing so, the petitioners alleged that their substantial interests were affected by DBR's action because approval of the prospectus made the park less attractive to potential purchasers of mobile homes and affected the value of their mobile homes. Village Park, 506 So. 2d at 430. DBR issued a final order denying the petitioners' Petition to Initiate Formal Proceedings because, among other things, petitioners lacked standing. Id. at 426. The First District Court of Appeal affirmed DBR's final order. Id. at 431. In doing so, the First District reasoned that the Agrico injury in fact standard had not been met because no showing was made "that any

homes have been offered for sale, have been sold, or that home owners have been unable to sell their homes due to the provisions contained in the prospectus.” Id. at 430.

13. The petitioners in Village Park then filed a Motion for Rehearing on the grounds the First District’s analysis required them to prove the truth of their allegations in their pleadings. Id. at 431. The First District responded by stating that the petitioners misunderstood its previous ruling. Id. The problem with the petition was that the petitioners failed to “demonstrate through their allegations that they had sustained either actual injury-in-fact or that they were in danger of sustaining some direct injury as a result of the agency’s action.” Id. at 433. Moreover, the court declared that the approval of the prospectus by DBR did not automatically result in the harms complained of but rather only the implementation of the prospectus may give rise to the petitioners’ concerns. Id. Because petitioners were unable to demonstrate they had been injured or were in immediate danger of direct injury as a result of the approval of the prospectus, the Motion for Rehearing was denied. Id. at 434.

14. Like the petitioners in Village Park, the Petitioners in the instant case have not alleged in paragraph 12 of the Petition that they are in immediate danger of direct injury. In fact, no such allegation can be made because it is not the adoption but the implementation of the Master Plan that may cause the injuries alleged. Thus, the allegations in paragraph 12 are inadequate to confer standing on the Petitioners.

15. The same reasoning applies to the allegations contained in paragraph 11(a) & (f)-(g) of the Petition. Young and the members of the Clean Water Network may be affected in the manner alleged only *if* the roadways in question are built and only then *if*

they are built in the location designated on the Master Plan. Thus, the alleged injuries by Petitioners are speculative and insufficient to confer standing.


16. Moreover, the concerns addressed in paragraph 11(b)-(e) of the Petition are premature and thus, equally speculative and hypothetical. As stated above, the Master Plan contains language that it is “conceptual in nature”, “for [] planning purposes”, and “subject to future revisions” It is the starting point for the Authority mandated by the Florida Legislature. § 343.82(3)(a), Fla. Stat. The fact that the Master Plan is subject to future revisions is made clear by the statutory requirement that it be updated annually. § 343.82(3)(b), Fla. Stat. These revisions can come both before and after the Master Plan is presented to the governing bodies of the affected counties and the legislative delegation members of those counties. See § 343.82(3)(c), Fla. Stat. Furthermore, nothing in the Authority’s statutory scheme, Sections 343.80-343.89, Florida Statutes, exempts it from complying with applicable federal, state, and local regulations regarding the construction of roadways. Compliance with such regulations will result in further changes to the Master Plan. In consultations with the county governing bodies as well as through compliance with federal, state, and local regulations, Petitioners concerns alleged in paragraph 11(b)-(e) of the Petition may very well be addressed. In fact, all concerns expressed in the entire Petition may be resolved. Thus, any injuries alleged at this point are speculative and insufficient to confer standing. See also Kruer v. Bd. of Trustees of Internal Improvement Trust Fund, 647 So. 2d 129, 131 (Fla. 1st DCA 1994) (explaining that the phrase in Section 120.569(1) “‘are determined by an agency’ suggests that the important or significant concerns of a party must be decided, settled, or resolved conclusively or finally by the agency”).

17. An additional ground upon which the Authority relies to deny standing to Petitioners is that “[p]articipation in a section 120.57 proceeding ordinarily requires that one’s substantial interests be impacted . . . in a manner beyond the injury which might be sustained by the general public.” St. Joe Paper Co. v. Dep’t of Cmty. Affairs, 657 So. 2d 27, 28 (Fla. 1st DCA 1995). The allegations regarding how Young and the members of the Clean Water Network are affected by the adoption of the Master Plan do not show how they are affected any more than the general public. In fact, it is alleged that “[a]mong other things, Petitioners contend that the Master Plan Phase II *affects the substantial interests of the PETITIONERS, and the general public* and is deficient in the following ways” (Petition, ¶ 11) (emphasis added). Thus, Petitioners lack standing for a formal administrative hearing under Section 120.569(1), Florida Statutes. See Grove Isle, Ltd. v. Bayshore Homeowners’ Ass’n, 418 So.2d 1046, 1047-48 (Fla. 1st DCA 1982).

The Northwest Florida Transportation Corridor Authority therefore, DENIES the Petition for Formal Administrative Proceeding filed by Clean Water Network of Florida, Inc. and Linda L. Young.

DONE AND ORDERED in Panama City, Florida this 2nd day of May, 2007.

NORTHWEST FLORIDA TRANSPORTATION
CORRIDOR AUTHORITY

By 
Randall A. McElheney, Chair

Copies Furnished to:

Clean Water Network of Florida, Inc.
517 Beverly Street
Tallahassee, FL 32301
(850)222-9188

Linda L. Young
7439 White Sands Blvd.
Navarre Beach, FL 32566
(850)939-5152

Florida Department of Transportation
Stephanie C. Kopelousos, Secretary of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

APPEAL OF FINAL ORDER

THIS FINAL ORDER may be appealed by filing notices of appeal and a filing fee, as set out in Section 120.68(2), Florida Statutes, and Rules 9.110(b) and (c), Florida Rules of Appellate Procedure, within thirty (30) days of the entry of this Final Order.