

Fla. Springs Council v. Suwanee River Water Mgmt. Dist., No. 1D21-1445, 2023 WL 218986 (Fla. 1st DCA Jan. 18, 2023)

Suwanee River Water Management District Permit Applicants Are Entitled to a Formal Administrative Hearing if the Permit Application is Denied

Appellant, Florida Springs Council, petitioned for an administrative hearing to challenge the issuance of a permit by Suwanee River Water Management District (“SRWMD”) to Seven Springs Water Company (“Seven Springs”).

Prior to the issuance of the permit, SRWMD published notice of intent to deny the requested permit to Seven Springs. Seven Springs petitioned for a formal administrative hearing to challenge the proposed denial. Because of SRWMD’s published intent to deny, Appellant did not intervene in the proceeding. After the formal hearing, the administrative law judge (“ALJ”) ordered SRWMD to approve Seven Springs’ permit application. SRWMD adopted the ALJ’s order under protest and issued the permit.

After the permit’s issuance, Appellant petitioned for an administrative hearing to challenge the permit under SRWMD Rule 40B-1.1010(2)(a) (the “Rule”). The ALJ did not agree, holding that the Appellant’s interpretation of the Rule would create a second point of entry in the administrative process. They expressed concerns that it “would mean that the administrative adjudicatory process would never come to an end as new and former petitioners attempt to get the same tribunals, DOAH and the District to rehear an unfavorable legal ruling.” This reasoning led to dismissal of Appellant’s petition with prejudice.

The First DCA focused their analysis on the plain language of the Rule. The Rule’s plain language states that if a final agency action “materially differs” from the written notice of intended action, persons substantially affected have an additional twenty-one (21) days to request an administrative hearing. In its analysis, the Court reasoned that the published notice of intent to deny the permit was materially different from the final action of approving and issuing the permit. This led the First DCA to hold that the plain, unchallenged language of the Rule provides Appellants with a clear point of entry and determined it was an error to dismiss the petition with prejudice. The Court reversed and remanded the petition to SRWMD for consideration consistent with their opinion.