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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BOOKER T. BYRD, ALMAZINE	)	
DELAINE and HOWARD DELAINE,	)	
Petitioners,	)	
	)	DOAH Case Nos.
	)	11-6246 & 11-6247
v.	)	
	)	OGC Case Nos.
	)	11-0015 & 11-0353
	)	
HERNANDO COUNTY and	)	
STATE OF FLORIDA,	)	
DEPARTMENT OF ENVIRONMENTAL	)	
PROTECTION	)	
Respondents	)	
_____	)	

HERNANDO COUNTY’S RESPONSE [IN OPPOSITION]
TO MOTION FOR EXTENSION OF TIME
(BOOKER T. BYRD)

Respondent, HERNANDO COUNTY (“the COUNTY”), by and through its undersigned counsel and pursuant to Rule 28-106.204(1), F.A.C., hereby responds to the *Request for Extension of Time to File Response to Order of Dismissal* (“Motion for an Extension of Time”), filed in the instant action by Petitioner, **BOOKER T. BYRD**, as follows:

1. Petitioners’ Motion for an Extension of Time, as more fully explained below, should be denied as Petitioners have complied with neither subsection (3) nor subsection (6) of Rule 28-106.204.

2 Rule 28-106.204(3) states that “[m]otions . . . shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.” Petitioners’ did not include such a statement in their Motion for an Extension of Time. Petitioners could not have done so, however, **as they did not contact the COUNTY’s undersigned counsel prior to filing the Motion.**

3. As of this filing the Mr. Byrd’s filing does not appear on the DOAH website. However, the undersigned counsel learned of Petitioner Booker T. Byrd’s filing via email from Jon Jouben, Assistant County Attorney. Jon Jouben received an email containing the text of Mr. Byrd’s filing with DOAH from a Mr. Richard Howell. (See attached Exhibit 2). Mr. Richard Howell is not an attorney licensed to practice law by the State of Florida or a qualified representative of the parties approved in accordance with Rule 28-106.106.

4. Except for the change to personalize the filing to Mr. Byrd, the filing is exactly the same as that of the filing for Almazine and Howard Delaine and suffers from the same defects.

5. Rule 28-106.204(6) states that “[m]otions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and **shall state good cause for the request.**” (Emphasis Added) Petitioners have not stated any legally cognizable grounds for an extension of time, to wit:

A. First, Petitioners argue that they are unable to retain counsel and locate witnesses. The COUNTY points out that Petitioners, ALMAZINE AND HOWARD DELAINE, filed their petition with Respondent, DEPARTMENT OF ENVIRONMENTAL

PROTECTION ("DEP") on February 24, 2011. Petitioner, BOOKER BYRD, filed his petition on May 27, 2011. Respectfully, Petitioners have had ample time in which they could retain counsel and locate their witnesses. Petitioners' allegation that the COUNTY's undersigned counsel is interfering with Petitioners' efforts are unsubstantiated and patently false. In fact, undersigned counsel's January 20, 2012 conferral letter to Petitioners concerning the County's January 27, 2012 motions, included the Florida Bar Lawyer Referral Service contact information. (See Attached Exhibit 1)

B. Secondly, Petitioners' statement that they will eventually be able to state a valid challenge to the Remedial Action Plan lacks merit on its face. According to Petitioners, "[t]he mere fact that the agency that completed the Remedial Action Plan never performed any type of site assessment on the Hernando Department of Public Works Facility is why the Remedial Action Plan does not meet the applicable requirements of law." Motion for an Extension of Time at 1-2. The Florida Administrative Code does not require a property owner to use the same consultant to prepare both a Site Assessment Report and the subsequent Remedial Action Plan. As stated in the County's prior motions, Petitioners are again challenging Hernando County's decisions (here a public contracting decision), not "agency action." Even if Petitioners were allowed to file amended petitions on this ground, those amended petitions would fail as a matter of law.

C. Finally, The agency action which is the subject of this proceeding is the December 6, 2010 approval of a Remedial Action Plan (RAP) to complete clean up of contaminated property owned by Hernando County. The cleanup of contaminated

property in Hernando County is being delayed by this proceeding and this delay increases costs, and otherwise harms and damages the citizens of Hernando County.

6. Accordingly, the COUNTY prays that this Tribunal enter an Order denying the *Request for Extension of Time to File Response to Order of Dismissal*, filed by Petitioner Booker T. Byrd, closing the files of the Division of Administrative Hearings on these consolidated cases (Byrd and Delaine), relinquishing jurisdiction over this matter to DEP, and granting such other and further relief that this Tribunal deems just and proper.

Dated: February 22, 2012

Respectfully submitted,

/s/ Richard Appicello

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 22ndth day of February, 2012, via U.S. Mail to:

Booker T. Byrd
234 D Street
Brooksville, FL 34601

and via electronic mail and U.S. Mail to:

Almazine and Howard Delaine hdelaine1@tampabay.rr.com
222 A Street
Brooksville, FL 34601

and via electronic mail ONLY to:

Stan Warden, Assistant General Counsel
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