

**ADMINISTRATION COMMISSION  
AGENDA**

**June 24, 2004**

1. **Request approval of the minutes for the meeting held April 29, 2004.**  
**(Withdrawn from May 25, 2004, consideration.)**
  
2. **Consideration of a Recommended Order issued by the Division of Administrative Hearings in the proceeding Jim Durham and Citizens for Proper Planning, Inc., (Petitioners) v. Polk County (Respondent) and Jack M. Berry, Inc., (Intervenor) (DOAH Case No. 03-0593GM and 03-0933GM) (AC Case No. ACC-04-002).**  
**(Withdrawn from May 25, 2004, consideration.)**

On January 22, 2003, Polk County adopted Ordinance CPA2003S-02, a small scale amendment, changing the future land use designation on the Polk County Future Land Use Map from Residential Low-1 to Convenience Center and Business Park Center. The land use changes were made on a 9.99 acre parcel of property owned by Jack M. Berry, Inc. The land use amendment was formalized by the adoption of Ordinance No. 03-03 and was later amended (making scrivener's corrections) by adoption of Ordinance No. 03-19 on March 15, 2003.

In response to the land use amendment, Jim Durham and Citizens for Proper Planning, Inc., filed a petition for formal administrative proceedings with the Division of Administrative Hearings (DOAH) on February 21 and March 19, 2003. Petitioners contend the small scale amendment actually involves a use of more than 10 acres. In addition, petitioners contend the plan amendment violates Future Land Use Element policies and is therefore inconsistent with the Polk County Comprehensive Plan. Jack M. Berry, Inc., filed a Motion to Intervene and was granted intervenor status. An administrative hearing was conducted by Administrative Law Judge Donald R. Alexander on December 18 and 19, 2003, in Bartow, Florida. Judge Alexander issued a recommended order on February 24, 2004, recommending the Administration Commission enter a final order determining that the small scale development amendment is not in compliance. In addition, Judge Alexander found that Citizens for Proper Planning, Inc., lack standing to file a challenge.

The Administration Commission received joint exceptions to the DOAH recommended order from Polk County and Jack M. Berry, Inc., on March 9, 2004. Petitioners filed exceptions to the recommended order on March 9, 2004, and filed a proposed final order on June 8, 2004.

**Recommendation:**

The staff recommendation will be distributed separately.

**Back-Up:**

DOAH's recommended order received on February 25, 2004. (Distributed with May 25, 2004, Agenda)

Respondent's and Intervenor's joint exceptions to the recommended order received on March 9, 2004. (Distributed with May 25, 2004, Agenda)

Petitioners' exceptions to the recommended order received on March 9, 2004. (Distributed with May 25, 2004, Agenda)

Petitioners' proposed final order received on June 8, 2004.

Draft Final Order to be distributed separately.

3. **Consideration of an Amended Determination of Noncompliance issued by the Department of Community Affairs in the proceeding Robert Alessi, Ronald Capron, Chad Hanson, Victor Lambou, and David Westmark (Petitioners) v. Wakulla County and Department of Community Affairs (Respondents) and Brad Suber, (Intervenor) (DOAH Case No. 03-0052GM) (AC Case No. ACC-04-001).**  
**(Withdrawn from May 25, 2004, consideration.)**

On October 21, 2002, Wakulla County amended its Future Land Use Map through the adoption of Ordinance No. 2002-28 and transmitted the amendment to the Department of Community Affairs (DCA) for review on November 1, 2002. The amendment changed two Future Land Use Map designations on a 266 acre parcel of property owned by David F. Harvey, Rhonda K. Harvey, and L.F. Young. The amendment changed land use designations Rural-2 and Agriculture to Urban-1. (Twenty acres of the property was changed from a designation of Rural-2 to Urban-1 and 182 acres of the property was changed from a designation of Agriculture to Urban-1. The remaining 64 acres were left under an Agriculture designation.) The land use changes were made as the owners intend to sell the property to Brad Suber for development purposes. The DCA issued a Notice of Intent to find the amendment in compliance on December 11, 2002.

In response to DCA's Notice of Intent, a petition for formal administrative hearing was filed with the DCA by Robert Alessi, Ronald Capron, Chad Hanson, Victor Lambou, and David Westmark challenging the amendment. The issues in the challenge include:

- Failure to protect wetlands and other environmental resources,
- Lack of water and sewer,

- Flooding,
- Lack of supporting data and analysis,
- Urban sprawl,
- Lack of need for the amendment, and
- Internal inconsistency with the existing Wakulla County Comprehensive Plan.

The DCA forwarded the petition to the Division of Administrative Hearings (DOAH) on January 8, 2003. Brad Suber, a resident of Wakulla County and developer and contract vendee of the property, was granted intervenor status. An administrative hearing was conducted by Administrative Law Judge David M. Maloney on April 10, 11, 16-18 and 21, 2003, in Tallahassee, Florida. Judge Maloney issued a recommended order on July 11, 2003, forwarding the proceeding to the DCA and recommending DCA issue a final order determining that the amendment is not in compliance. The DCA remanded the proceeding to DOAH on October 8, 2003, seeking clarification and an Order on Remand was issued by Judge Maloney on October 29, 2003. The DCA issued a Determination of Noncompliance on February 10, 2004, recommending rulings on exceptions filed by parties in the proceeding and recommending the Administration Commission find the amendment not in compliance. On April 1, 2004, the DCA submitted an Amended Determination of Noncompliance that addressed additional exceptions filed. The DCA's recommendation of not in compliance remained the same.

On May 17, 2004, Intervenor filed a letter recommending proposed remedial measures and exceptions to the DCA Amended Determination of Noncompliance. Petitioners filed a response to Intervenor's letter on May 24, 2004, and Intervenor filed a reply on May 23, 2004. The DCA forwarded a recommendation of remedial measures to the Administration Commission on June 7, 2004.

**Recommendation:**

The staff recommendation will be distributed separately.

**Back-Up:**

DCA's Determination of Noncompliance received February 17, 2004. (Distributed with May 25, 2004, Agenda)

DCA's Amended Determination of Noncompliance received April 1, 2004. (Distributed with May 25, 2004, Agenda)

Intervenor's notice of filing letter received on May 17, 2004.

Intervenor's reply to Petitioners' response to notice of filing letter received on May 23, 2004.

Petitioners' response to notice of filing letter received on May 24, 2004.

DCA's recommendation of remedial measures received June 7, 2004.

Draft Final Order to be distributed separately.

4. **Consideration of a Recommended Order issued by the Division of Administrative Hearings in the proceeding Charles Heston, Oak Haven Preservation Association, Harold Mosley, James Coleman, Michael and Laura Langton, Mary Ann Saadeh, Robert and Virginia Gardner, and Marie Schuller (Petitioners) v. City of Jacksonville (Respondent) and Bartram Atlantic, LLP, and Wal-Mart Stores East, L.P. (Intervenors).**  
**(DOAH Case No. 03-4283GM) (AC Case No. ACC-04-004).**

On October 27, 2003, the City of Jacksonville adopted Ordinance No. 2003-1070-E, a small scale amendment, changing the future land use designation on the Future Land Use Map from Residential Professional Institution (RPI) to Neighborhood Commercial (NC). The land use change was made on an approximately 8.5 acre parcel of property owned by Bartram Atlantic, LLP. Wal-Mart Stores East, LP, has a contract to purchase the property from Bartram Atlantic, LLP, for development of a freestanding grocery store.

In response to the land use amendment, Petitioners, Charles Heston, Oak Haven Preservation Association, Harold Mosley, James Coleman, Michael and Laura Langton, Mary Ann Saadeh, Robert and Virginia Gardner, and Marie Schuller filed a petition for formal administrative proceedings with the Division of Administrative Hearings (DOAH) on November 18, 2003. Petitioners contend the small scale amendment was not in compliance because it was not based on adequate data and analysis and was internally inconsistent with other provisions of the City of Jacksonville Comprehensive Plan. Bartram Atlantic, LLP, was granted intervenor status on December 10, 2003. An administrative hearing was conducted by Administrative Law Judge Donald R. Alexander on January 7 and 8, 2004, in Jacksonville, Florida. Judge Alexander issued a recommended order on March 5, 2004, recommending the Administration Commission enter a final order determining that the small scale development amendment adopted by the City of Jacksonville is not in compliance.

The Administration Commission received joint exceptions to the DOAH recommended order from the City of Jacksonville and Bartram Atlantic, LLP, and Wal-Mart Stores East, LP, on March 26, 2004. Petitioners filed response to exceptions to the recommended order on April 5, 2004, and filed a clarified response to exceptions on April 8, 2004.

**Recommendation:**

The staff recommendation will be distributed separately.

**Back-Up:**

DOAH's recommended order received on March 11, 2004.

Respondent's and Intervenors' joint exceptions to the recommended order received on March 26, 2004.

Petitioners' response to exceptions to the recommended order received on April 5, 2004.

Petitioners' clarified response to exceptions received on April 8, 2004.

Draft Final Order to be distributed separately.