

SECOND AMENDED ADMINISTRATION COMMISSION
AGENDA

October 14, 2008

1. **Approval of the minutes of the meeting held September 30, 2008.**

2. **Consideration of a Mandate and Opinion issued by the First District Court of Appeal in the case of Don and Pamela Ashley vs. State of Florida, Administration Commission, Department of Community Affairs, Franklin County, and The St. Joe Company.**

On December 8, 2006, the Administration Commission issued a Final Order in the proceeding of Don and Pamela Ashley, Sierra Club, Inc., and Panhandle Citizens Coalition, Inc., vs. Department of Community Affairs, Franklin County, The St. Joe Company and Eastpoint Water and Sewer District. The issue before the Commission involved a challenge to comprehensive plan amendments adopted by Franklin County. The Commission rendered its Final Order finding the proposed plan amendments not “in compliance.”

Don and Pamela Ashley appealed the Commission’s Final Order to the First District Court of Appeal (Court). The Court reversed the Commission’s Final Order to the extent the Commission, adopting the Division of Administrative Hearings (DOAH) findings, found the Rural Village and Conservation Residential categories are not mixed-use categories, subject to Rule 9J-5.006(4)(c), FAC. The Court affirmed in part, reversed in part and remanded the case to the Commission for further proceedings.

Upon legal review, staff recommends that the case be remanded to DOAH for further proceedings to determine whether the Rural Village and Conservation Residential categories comply with standards for mixed-use land categories, as set forth in Rule 9J-5.006(4)(c), FAC.

Staff Recommendation:

Authorize the Secretary of the Commission to enter the Draft Order Vacating Final Order In Part and Remanding In Part remanding the case to the Division of Administrative Hearings for further proceedings pursuant to the Opinion of the First District Court of Appeal.

Back-Up:

First District Court of Appeal letter with Mandate and Opinion received on April 2, 2008.

Administration Commission Final Order #AC-06-008.

Draft Order Vacating Final Order In Part and Remanding In Part.

3. **Consideration of a Recommended Order issued by the Division of Administrative Hearings (DOAH) in the proceeding of The Vizcayans, Inc., a Florida not-for-profit corporation; Grove Isle Association, Inc., a Florida not-for-profit corporation; Constance Steen; Jason E. Bloch; and Glencoe Neighborhood Association, Inc., a Florida not-for-profit corporation vs. City of Miami and TRG-MH Venture, Ltd., and Mercy Hospital, Inc., a not-for-profit Florida corporation (AC Case No. AC-08-004, DOAH Case Nos. 07-2498GM and 07-2499GM).**

On April 26, 2007, the City of Miami adopted a comprehensive plan amendment through Ordinance number 12911 which changed the designation of a 6.72 acre parcel of land on its Future Land Use Map ("FLUM") from Major Institutional, Public Facilities, Transportation and Utilities to High Density Multifamily Residential. The applicant sought to build a proposed residential development consisting of 300 units on the subject parcel. The comprehensive plan amendment was adopted through the procedure established for a small-scale FLUM amendment in Section 163.3187, FS.

On June 4, 2007, The Vizcayans, Inc., Alvah H. Chapman, Jr., Betty B. Chapman and Cathy L. Jones filed a petition at the Division of Administrative Hearings (DOAH) challenging the FLUM amendment's compliance with Chapter 163, FS. On June 6, 2007, Grove Isle Association, Inc. (Grove Isle), Constance Steen, Jason E. Bloch, and Glencoe Neighborhood Association, Inc., (Glencoe) filed a similar petition challenging the FLUM amendment. On June 13, 2007, the two cases were consolidated, and TRG-MH Venture, LTD., (TRG-MH) the contract vendee and proposed developer of the parcel, filed its Petition to Intervene in support of the challenged amendment. TRG-MH's Petition was followed by the Petition to Intervene filed by Mercy Hospital, the parcel's owner and contract vendor, also in support of the challenged amendment. Both Petitions to Intervene were granted. Petitioners Cathy L. Jones and Alvah H. and Betty B. Chapman voluntarily dismissed their challenges in June, 2007.

An administrative hearing was conducted by DOAH Administrative Law Judge J. Lawrence Johnston on January 22 through 25, 2008, in Miami, Florida. On July 10, 2008, Judge Johnston filed a Recommended Order with the Commission recommending the Commission enter a final order finding the FLUM Amendment adopted by the City of Miami Ordinance 12911 is not "in compliance," as defined by section 163.3184(1)(b), FS. The parties filed exceptions to the DOAH Recommended Order and responses to the exceptions with the Commission.

Upon legal review of the DOAH Recommended Order, it was determined that the ALJ applied the incorrect standard of proof with respect to the local government's determination that the small scale development amendment is related to and consistent with its comprehensive plan. Staff recommends remanding the case to DOAH for further proceedings.

Staff Recommendation:

Authorize the Secretary of the Commission to enter the Amended Draft Order of Remand remanding the case to the Division of Administrative Hearings for further proceedings.

Back-Up:

DOAH Recommended Order received on July 10, 2008. (Distributed to Cabinet Offices on July 16, 2008.)

The Vizcayans filed exceptions to the DOAH Recommended Order on July 24, 2008.

Grove Isle, Constance Steen, Jason E. Bloch, and Glencoe filed exceptions to the DOAH Recommended Order on July 25, 2008.

The Vizcayans filed amended exceptions to the DOAH Recommended Order on July 28, 2008.

Grove Isle, Constance Steen, Jason E. Bloch, and Glencoe filed amended exceptions to the DOAH Recommended Order on July 29, 2008.

City of Miami, TRG-MH and Mercy Hospital filed joint exceptions to the DOAH Recommended Order on July 30, 2008.

The Vizcayans' response to the City of Miami, TRG-MH and Mercy Hospital's joint exceptions to the DOAH Recommended Order filed on August 4, 2008.

Grove Isle, Constance Steen, Jason E. Bloch, and Glencoe's response to the City of Miami, TRG-MH and Mercy Hospital's joint exceptions filed on August 4, 2008.

City of Miami, TRG-MH and Mercy Hospital's joint response to The Vizcayans' exceptions filed on August 4, 2008.

Amended Draft Order of Remand.