

ADMINISTRATION COMMISSION
AMENDED AGENDA

December 8, 2009

Attachments to the items below can be viewed at the following link:
<http://www.myflorida.com/myflorida/cabinet/adcom/index.html>

1. Florida Keys Area of Critical State Concern: Consideration of Monroe County's Petition for a Variance From or Waiver of 20 Percent Rate of Growth Ordinance (ROGO) Allocation Reduction in Rule 28-20.110, FAC.

At the November 17, 2009, meeting of the Administration Commission, the Commission found that substantial progress was not achieved by Monroe County in completing the work program tasks provided in Rule 28-20.110, FAC. Rule 28-20.110, FAC, requires the Commission to reduce the residential building permit allocation unit cap, absent a waiver, upon the finding of no substantial progress in completing work program tasks. Monroe County filed a Petition for Variance From or Waiver of the 20 Percent Rate of Growth Ordinance (ROGO) in Rule 28-20.110, FAC, on November 2, 2009. The Commission is authorized to consider the County's petition pursuant to Chapter 120.542, FS, and Rule 28-104.542, FAC. At the November 17, 2009, Cabinet meeting, the Commission directed staff to process Monroe County's petition and make recommendations at the December 8, 2009, meeting. The County's petition was duly noticed in the November 20, 2009, edition of the *Florida Administrative Weekly* pursuant to Chapter 120, FS. The public comment period provided in the notice concludes on December 4, 2009. Upon the conclusion of the comment period, staff will distribute a draft final order.

Staff Recommendation:

Authorize the Secretary to enter the Draft Final Order.

Back-Up:

Monroe County's Petition for a Variance from or Waiver of 20 Percent Rate of Growth Ordinance (ROGO) Allocation Reduction in Rule 28-20.110, FAC, received on November 2, 2009.

Draft Final Order. (To be distributed separately.)

2. **Consideration of a Division of Administrative Hearings Recommended Order and an Amended Determination of Non-Compliance submitted by the Department of Community Affairs in the proceeding of 1000 Friends of Florida, Inc., and Rosa Durando (Petitioners) vs. Palm Beach County and Department of Community Affairs (Respondents) and Salvatore J. Balsamo and Lantana Farm Associates, Inc. (Intervenors) (AC Case No. ACC-09-004; DOAH Case No. 06-4544GM).**

The issue in this case is whether the Palm Beach County Comprehensive Plan Amendments changing the future land use designations for a 97.55-acre parcel of land and a 26.23-acre parcel of land are in compliance pursuant to section 163.3184(1)(b), FS. On August 21, 2006, Palm Beach County adopted two Future Land Use Map (“FLUM”) amendments (collectively “Amendments”). Ordinance 2006-28 (“Balsamo Amendment”) changed a 97.55-acre parcel from Rural Residential (one unit per ten acres, referred to as “RR-10”) to Low Residential (one unit per acre, referred to as “LR-1”). Palm Beach County Ordinance 2006-29, as amended by Ordinance 2008-002 (“Lantana Farm Amendment”), changed a 26.23-acre parcel from RR-10 to LR-1. Both Amendments also changed the applicable tier designation for the parcels from “Rural” to “Urban-Suburban.”

On November 13, 2006, the Department of Community Affairs (“Department”) filed a petition at the Division of Administrative Hearings (“DOAH”) challenging the Amendments. Salvatore J. Balsamo and Lantana Farm Associates, Inc., successfully petitioned to intervene in the proceeding. On February 7, 2007, the case was placed in abeyance for purposes of negotiation. During the abeyance, the Department and the County executed settlement agreements, pursuant to section 163.3184 (16), FS. On March 14, 2008, the Department issued an Amended Notice of Intent to find the Balsamo Amendment in compliance. On March 4, 2008, the Department issued a Cumulative Notice of Intent to find Ordinance 2006-29, as amended by Ordinance 2008-02, in compliance. 1000 Friends of Florida, Inc., and Rosa Durando (“1000 Friends” and “Durando”) filed and were permitted to intervene in the DOAH proceeding. The Administrative Law Judge (“ALJ”) realigned the parties accordingly. As the only parties still challenging the Amendments, 1000 Friends and Durando, became the Petitioners, and the Department became a Respondent alongside the County.

A final hearing was conducted on October 6-8, 2008, in West Palm Beach, and on October 23-24, 2008, in Tallahassee, Florida. On January 23, 2009, the DOAH ALJ entered a Recommended Order. The ALJ found that the Balsamo and Lantana Farm Amendments cause “the Comprehensive Plan to be internally inconsistent” and recommended that the Department enter a final order determining that the Amendments are not in compliance. The Department submitted a Determination of Non-Compliance to the Commission for final agency action pursuant to section 163.3184(9)(b), FS. The Department’s

Determination of Non-Compliance was amended and submitted to the Commission on September 15, 2009.

Staff Recommendation:

Authorize the Secretary to enter the Amended Draft Final Order.

Back-Up:

DCA's Amended Determination of Non-Compliance issued on September 15, 2009.

Draft Final Order. (To be distributed separately.)