

# ADMINISTRATION COMMISSION AGENDA

February 22, 2011

Attachments to the items below can be viewed at the following link:  
[http://www.myflorida.com/myflorida/cabinet/adcom/20110222\\_index.html](http://www.myflorida.com/myflorida/cabinet/adcom/20110222_index.html)

1. **Approval of the minutes of the December 7, 2010, meeting.**
2. **Consideration of a Draft Final Order in the proceeding of Richard A. Burgess vs. Department of Community Affairs and City of Edgewater and Hammock Creek Green, LLC, AC Case No. ACC-10-008.**

Pursuant to Section 163.3184(9)(b), FS, this proceeding is before the Administration Commission for entry of a final order. The issue in this case is whether the amendments to the City of Edgewater's Comprehensive Plan, adopted by Ordinance No. 2008-O-10, and as remediated by Ordinance Number 2010-O-01, are "in compliance."

## **Petitioner's Disputed Issues**

Petitioner's disputed issues with comprehensive plan amendments include:

- Format
- Materials Adopted by Reference
- Planning Timeframes
- Data Requirements
- Future Land Use Element Analysis Requirements
- Meaningful and Predictable Land Development Standards and Mixed-Use Standards
- Housing Element Analysis
- Conservation Element Analysis

## **Background**

**Ordinance No. 2008-O-10** - On February 2, 2009, the City of Edgewater (City) adopted Ordinance No. 2008-O-10 creating the Restoration Sustainable Community Development District through text amendment to the Future Land Use Element (FLUE) and amendment to the Future Land Use Map (FLUM).

The Department of Community Affairs (DCA) reviewed the amendments and issued a Statement of Intent, finding the Plan Amendment not "in compliance" and filed a petition with the Division of Administrative Hearings (DOAH). Hammock Creek Green, LLC (Hammock Creek), Richard A. Burgess, and Edgewater Citizens Alliance for Responsible Development, Inc. (ECARD) intervened in the DOAH proceeding. An abeyance of the DOAH proceeding was granted and the City, DCA, and Hammock Creek entered into a Stipulated Settlement Agreement resolving all of their disputed issues. ECARD and Mr. Burgess did not sign on to the Settlement Agreement.

**Ordinance No. 2010-O-01** - On February 23, 2010, the City adopted a remedial amendment pursuant to the above referenced Settlement Agreement through Ordinance No. 2010-O-01.

On March 18, 2010, the DCA issued its Cumulative Notice of Intent to find the Plan Amendment as remediated “in compliance.” The parties were realigned at DOAH pursuant to Section 163.3184(16)(f), FS. Mr. Burgess was the sole remaining Petitioner in the proceeding after ECARD filed a voluntary dismissal on April 7, 2010.

An administrative hearing was conducted on May 17 and 18, 2010. Administrative Law Judge Bram Canter entered a Recommended Order on July 27, 2010, recommending that the DCA enter a Final Order finding the amendments to the City of Edgewater’s Comprehensive Plan, adopted by Ordinance No. 2008-O-10 and revised by Ordinance No. 2010-O-01, are “in compliance.”

Petitioner, Mr. Burgess, filed Exceptions to the Recommended Order and a Motion for Remand. The DCA filed Exceptions and Mr. Burgess responded to the DCA’s Exceptions. The City and Hammock Creek jointly filed responses to Petitioner’s Exceptions and the Motion for Remand.

After receipt and review of the Recommended Order, the Exceptions and Responses to Exceptions, and the Motion for Remand, a Determination of Non-Compliance was issued by the DCA. Because the DCA’s Determination reverses the DOAH Administrative Law Judge’s recommendation, the Recommended Order, the Exceptions and Responses to Exceptions, and the Motion for Remand were submitted to the Administration Commission for final agency action pursuant to Section 163.3184(9)(b), FS. The DCA also included recommended rulings on the Exceptions in support of the determination that the Plan Amendment is not “in compliance.”

On February 11, 2011, the DCA filed a Proposed Final Order with the Administration Commission. The Proposed Final Order suggests rulings on the Exceptions and the Motion for Remand and determines that the Plan Amendment adopted by the City of Edgewater through Ordinance No. 2008-O-10 as remediated by Ordinance No. 2010-O-01, is “in compliance.”

The Administration Commission is required to take final agency action in this proceeding in the form of a final order. The Commission’s final order must contain rulings on the Exceptions to the Recommended Order pursuant to 163.3184(9)(b), FS. Additionally, the Commission must rule on the Motion for Remand. Commission staff will distribute a Draft Final Order for consideration under separate cover.

**Plan Amendment and Site Information** (From Recommended Order)

The Plan Amendment creates the Restoration Sustainable Community Development District (Restoration SCD). The new Restoration SCD is described in a new Restoration Sub-Element of the FLUE:

The Restoration SCD is the result of a conscious planning approach based on the most current New Urbanist research and advanced practices. The compact development pattern is designed to and shall provide for a diverse community with distinct place types and multiple experiences that are appealing to residents, employees, and visitors. It shall provide for walkability, a broad range of inclusive household demographics, the ability to connect the community directly to a natural experience, transit ready design, and a high level of environmental stewardship and planning.

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In order to facilitate this vision, the City shall recognize that density is important to the restoration SCD outcome, but no more important than the mixing of uses, the development of a diverse population through the provision of housing choice and employment centers, the connection of streets and the design of structures and spaces on a human scale.

The new land use designation applies to 5,187 acres of land on the west side of Interstate 95 in Volusia County. The site is owned by Hammock Creek and is not currently being used. The parcel was previously used for silviculture.

The site was annexed into the City in 2005, but was never assigned a future land use designation by the City. The Volusia County land use categories for the property are:

- Environmental Systems Corridor – allows a maximum residential density of one unit per 25 acres.
- Forestry Resource – allows a maximum residential density of one unit per 20 acres, or up to one unit per five acres with clustering.

The Restoration SCD Sub-Element includes the Restoration SCD Conservation/Development Areas Map which divides the site into three areas: Conservation, SCD Conservation/Restoration, and SCD Community Development. The SCD Community Development area is also referred to as the “Build Envelope” as it is the only area where development can occur. The Build Envelope is approximately 25% of the total land area. At least 50% of the Restoration SCD site is required to be permanently protected open space.

The Restoration SCD land use designation has an overall residential density cap of 8,500 residential units and a non-residential intensity cap of 3,300,000 square feet.

**Associated Proceeding Pending before the Florida Land and Water Adjudicatory Commission**

There is a related Development of Regional Impact (DRI) for the subject parcel, the Restoration DRI. The Restoration DRI is the subject of an appeal before the Florida Land and Water Adjudicatory Commission. The DRI appeal proceeding is currently in abeyance pending resolution of the subject comprehensive plan amendment proceeding.

**Staff Recommendation**

Authorize the Secretary to enter the Draft Final Order.

**Back-Up**

Division of Administrative Hearings Recommended Order issued on July 27, 2010.

Petitioner's Exceptions to Recommended Order filed with DCA on August 3, 2010.

Petitioner's Motion for Remand filed with DCA on August 3, 2010.

City of Edgewater and Hammock Creek Green, LLC, Response to Petitioner's Exceptions to Recommended Order and Notice of Errata/Exception filed with DCA on August 9, 2010.

Department of Community Affairs' Exceptions to the Recommended Order filed with DCA on August 11, 2010.

City of Edgewater and Hammock Creek Green, LLC, Response in Opposition to Petitioner's Motion for Remand filed with DCA on August 11, 2010.

Petitioner's Response to Department of Community Affairs Exceptions to Recommended Order filed with DCA on August 16, 2010.

Department of Community Affairs' Determination of Non-Compliance received December 27, 2010.

Department of Community Affairs' Notice of Filing Proposed Final Order received February 11, 2011.

Draft Final Order. (To be distributed separately.)