

**ADMINISTRATION COMMISSION
AMENDED AGENDA**

March 9, 2011

Attachments to the items below can be viewed at the following link:
http://www.myflorida.com/myflorida/cabinet/adcom/20110309_index.html

1. **Approval of the minutes of the February 22, 2011, meeting.**
2. **Florida Keys Area of Critical State Concern: Consideration of the Department of Community Affairs' Recommended Notices of Change for Rules 28-20.130 and 28-20.140 for Monroe County, Rules 28-18.100, 28-18.300 and 28-18.400 for the City of Marathon, and Rules 28-19.300 and 28-19.310 for the Village of Islamorada.**

This item relates to action taken by the Administration Commission during the December 7, 2010, meeting on the Florida Keys Area of Critical State Concern.

In December, 2010, the Commission authorized the Department of Community Affairs (DCA) to publish rules in the Florida Administrative Weekly (FAW) incorporating 2010 Legislative Session changes on the process for the removal of the designation of the Florida Keys as an area of critical state concern and extending the deadline to meet advanced wastewater treatment standards to reduce nutrient loading in the nearshore waters of the Florida Keys. Specific rule numbers and titles for each local government are listed below:

Monroe County

28-20.130 Work Program Administration
28-20.140 Comprehensive Plan

City of Marathon

28-18.100 Purpose and Effect
28-18.300 Work Program Administration
28-18.400 Comprehensive Plan

Village of Islamorada

28-19.300 Work Program Administration
28-19.310 Comprehensive Plan

The Commission approved the above referenced rules in order to accomplish the following:

- Implement legislative intent and mandates of the 2010 Legislation for the Florida Keys, including requirements for specifying work program tasks by rule.
- Assist local governments to generate revenue and secure financing for wastewater and stormwater projects, as well as land acquisition.
- Ensure that hurricane evacuation tasks are completed as scheduled to ensure public safety.

- Reduce the liability of the state and local governments with respect to property rights.
- Provide accountability and transparency to ensure that specific tasks are completed by the agreed upon interim deadlines without jeopardizing success in meeting the statutorily mandated 2015 deadline.

Immediately following the December Commission meeting, the proposed rules were published in the FAW and an opportunity for comment and public hearing was provided. In response to the publishing, Monroe County and the Village of Islamorada timely requested a public hearing and submitted written comments on the content of their respective rules. The comments consist primarily of technical changes, task scheduling adjustments, language clarification, and requests for limited substantive changes. Substantive changes address:

- Revision of rule language to accommodate the schedule of wastewater implementation plan projects for Monroe County (Cudjoe Regional Wastewater Treatment Facility) and the Village of Islamorada.
- Revision of rule language to provide for coordination between the three local governments and the Department of Health with respect to enforcement of upgrading on-site wastewater systems (septic systems).

Comments were also submitted by the Joint Administrative Procedures Committee (JAPC) on the Monroe County, City of Marathon and Village of Islamorada proposed rules. The JAPC comments address technical revisions, duplication of statutory language, the need for legislative ratification, and updates to the statements of estimated regulatory cost.

The Small Business Regulatory Advisory Council filed an objection to the City of Marathon's proposed rules and requested the Commission, "look at any potential room for consideration of lower-cost alternatives for small businesses." Staff provided additional information to the Council in response to their objection explaining that the proposed rules for the City of Marathon, in fact, represent the lower-cost alternative. In light of the clarifying information, the Council reconsidered the City of Marathon's proposed rules on February 25 and voted to take no further action – the objection has been resolved.

The DCA conducted a comprehensive review of all written comments and public hearing testimony received during the rulemaking process, conducted meetings with affected state agencies on proposed rule revisions, and considered input from the Small Business Regulatory Advisory Council. On February 21, 2011, the DCA submitted a letter to the Secretary of the Commission recommending Notices of Change for proposed Rules 28-20.130 and 28-20.140 for Monroe County, Rules 28-18.100, 28-18.300 and 28-18.400 for the City of Marathon, and Rules 28-19.300 and 28-19.310 for the Village of Islamorada. The Notices address the majority of the written comments and public hearing testimony.

Staff recommends approval of the DCA proposed Notices of Change, as amended. If the Commission approves the Notices of Change, the DCA on behalf of the Commission will immediately submit the Notices for publication in the FAW. After completing the remaining rulemaking provisions required by Chapter 120, FS, DCA will file the rules with the Department of State for final adoption and then immediately file the rules for legislative ratification during the 2011 Legislative Session.

Staff Recommendation:

1. Approve for publication and adoption proposed Notices of Change for Rules 28-20.130 and 28-20.140, as amended, for Monroe County, Rules 28-18.100, 28-18.300 and 28-18.400 for the City of Marathon, and Rules 28-19.300 and 28-19.310, as amended, for the Village of Islamorada.
2. Authorize the DCA on behalf of the Commission to file Rules 28-20.130 and 28-20.140, as amended, for Monroe County, Rules 28-18.100, 28-18.300 and 28-18.400 for the City of Marathon, and Rules 28-19.300 and 28-19.310, as amended, for the Village of Islamorada for legislative ratification pursuant to 2010-279, Laws of Florida.
3. Direct staff to amend each "30 Day Report" issued in December, 2010, to reflect the revisions provided in the Notices of Change for Rules 28-20.130 and 28-20.140, as amended, for Monroe County, Rules 28-18.100, 28-18.300 and 28-18.400 for the City of Marathon, and Rules 28-19.300 and 28-19.310, as amended, for the Village of Islamorada once the referenced rules become effective.

Back-Up

Background information on the Florida Keys Area of Critical State Concern.

Village of Islamorada's comments on proposed rule language received on December 28, 2010.

Monroe County's comments on proposed rule language received on January 10, 2011.

JAPC's comments on Rule Chapter 28-20 for Monroe County received on January 18, 2011.

JAPC's comments on Rule Chapter 28-18 for the City of Marathon received on January 18, 2011.

JAPC's comments on Rule Chapter 28-19 for the Village of Islamorada received on January 18, 2011.

Small Business Regulatory Advisory Council's letter of objection received on January 28, 2011.

DCA's letter and recommended Notices of Change for Rules 28-20.130 and 28-20.140 for Monroe County, Rules 28-18.100, 28-18.300 and 28-18.400 for the City of Marathon, and Rules 28-19.300 and 28-19.310 for the Village of Islamorada.

Annotated Notices of Change for Rules 28-20.130 and 28-20.140 for Monroe County, Rules 28-18.100, 28-18.300 and 28-18.400 for the City of Marathon, and Rules 28-19.300 and 28-19.310 for the Village of Islamorada.

Small Business Regulatory Advisory Council's letter of no further action received on February 25, 2011.

Recommended amendment to Notice of Change for Rule 28-20.140 filed by the Department of Community Affairs on February 28, 2011.

Recommended amendment to Notice of Change for Rule 28-19.310 filed by the Department of Community Affairs on March 2, 2011.

3. **Consideration of a Draft Final Order in the proceeding of Flagler Retail Associates, Ltd.; Flagler S.C., LLC; and SC Mota Associates, Ltd., (Petitioners) vs. Department of Community Affairs and Miami-Dade County (Respondents) and Blue Lake Development Corporation (Intervenor), AC Case No. ACC-10-006.**

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 an amendment to the Land Use Plan (LUP) map adopted on May 6, 2009, through Miami-Dade County Ordinance No. 09-28 is "in compliance."

Petitioners' Objections

Petitioners contend the map change was not supported by relevant and appropriate data and analysis demonstrating a need for commercial development.

Background

On May 6, 2009, Miami-Dade County adopted an amendment to its comprehensive plan through Ordinance 09-28 changing the future land use designation of a 41-acre parcel of land from Low-Medium Density Residential Communities to Business and Office. The Department of Community Affairs (DCA) reviewed the amendment and published a Notice of Intent to find the plan amendment "in compliance" on August 3, 2009. Flagler Retail Associates, Ltd., Flagler S.C., LLC, and SC Mota Associates, Ltd., filed a Petition challenging the comprehensive plan amendment. The Petition was dismissed without prejudice and an Amended Petition was filed on August 24, 2009. The Amended Petition was referred to the Division of Administrative Hearings (DOAH) on August 28, 2009. Blue Lake Development Corporation, the owner of the subject property,

intervened in the DOAH proceeding. A Second Amended Petition was filed on November 3, 2009.

An administrative hearing was conducted on ~~March 1 through 3~~ ~~February 2 through 5~~, 2010, in Miami, Florida. Administrative Law Judge Alexander entered a Corrected Recommended Order on July 23, 2010, recommending that the DCA enter a final order determining the plan amendment adopted by Ordinance 09-28 be found not “in compliance.” (Judge Alexander’s initial Recommended Order erroneously transmitted the proceeding directly to the Administration Commission. The Corrected Recommended Order addresses this error.)

After receipt and review of the Corrected Recommended Order, the Exceptions to the Corrected Recommended Order filed by Miami-Dade County and Blue Lake Development Corporation and Responses to Exceptions filed by Petitioners, a Determination of Non-Compliance was issued by the DCA and forwarded to the Administration Commission for final agency action pursuant to Section 163.3184(9)(b), FS. The DCA included recommended rulings on the Exceptions in support of the determination that the amendment is not “in compliance.”

Site and Plan Amendment Information (from Corrected Recommended Order)

The subject parcel is a 41-acre parcel of land in an unincorporated part of Miami-Dade County. The property has been owned by Intervenor, Blue Lake Development Corporation, since 1966. The subject parcel was a mobile home park from 1957 until June 2007.

The property is located within the County’s Urban Development Boundary at the northeast corner of West Flagler Street, a six-lane divided arterial roadway running in an east-west direction and designated as a major roadway, and Northwest 102nd Avenue (also known as West Park Drive). The southwest corner of the property borders the City of Sweetwater and a small shopping center. Directly to the west of the property and across West Park Drive is a part of the Florida International University campus. To the east are the campuses of a public middle school and elementary school, while a larger, single-family residential area lies to the south. Directly north of the property (and just south of State Road 836, also known as the Dolphin Expressway) is the western portion of a large multi-family residential complex (formerly a golf course) identified in the record as the Fountainbleau Park area, which stretches across Northwest 97th Avenue to the east.

The plan amendment changes the land use designation on the subject parcel from Low-Medium Density Residential Communities to Business and Office. The former land use allows between six and thirteen dwelling units per gross acre and could be fully developed with as few as 244 residential units or as many as 533. The new land use allows both residential and commercial development, including a wide range of commercial uses such as retail, professional services, and offices. If developed to its

maximum residential potential, the new category could accommodate more than 2,200 units. If developed to its maximum commercial potential, the new use would allow more than 679,000 square feet of commercial floor space. However, property owner Blue Lake Development Corporation executed and recorded a Declaration of Restrictions for the parcel providing:

Notwithstanding the re-designation of the Property to "Business and Office" on the County's LUP map, the maximum development of the Property shall not exceed the following: (a) 375,000 square feet of retail, commercial, personal services and offices, and (b) no less than 150 dwelling units designated for elderly housing, as such term is defined under Section 202 of the Fair Housing Act of 1959 (12 USC 1701) and Chapter 11A of the Miami-Dade County Code (the "Code"), along with such ancillary and accessory uses as may be desirable, necessary or complementary to satisfy the service needs of the residents, such as, but not limited to, counseling, medical, nutritional, and physical therapy, provided that such ancillary and accessory uses shall not exceed fifteen percent (15%) of the floor area of the elderly housing facility.

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 Corrected Recommended Order pursuant to 163.3184(9)(b), FS. Staff will distribute a Draft Final Order for Commission consideration under separate cover.

Staff Recommendation

Authorize the Secretary to enter the Draft Final Order.

Back-Up

DOAH's Corrected Recommended Order issued on July 23, 2010.

Blue Lake Development Corporation's Exceptions to Corrected Recommended Order filed with DCA on August 9, 2010.

Miami-Dade County's Exceptions to Corrected Recommended Order filed with DCA on August 9, 2010.

Petitioners' Response to Exceptions to Corrected Recommended Order filed with DCA on August 26, 2010.

DCA's Determination of Non-Compliance received on December 6, 2010.

Draft Final Order. (To be distributed separately.)