

ADMINISTRATION COMMISSION AGENDA

August 16, 2011

Attachments to the items below can be viewed at the following link:
http://www.myflorida.com/myflorida/cabinet/adcom/20110816_index.html

1. **Approval of the minutes of the March 9, 2011, meeting.**
2. **Consideration of (1) a Mandate and Opinion issued by the First District Court of Appeal; and (2) a Motion to Tax Costs filed by Katherine's Bay, LLC; in the proceeding of Ronald J. Fagan vs. Citrus County and Katherine's Bay, LLC (AC Case No. ACC-09-005) (DOAH Case No. 09-3487GM).**

This item is before the Commission for action pursuant to a Mandate and Opinion issued by the First District Court of Appeal in the Ronald J. Fagan vs. Citrus County and Katherine's Bay, LLC, proceeding. Additionally, a Motion to Tax Costs filed by Katherine's Bay, LLC, is before the Commission pursuant to Rule 9.400(a)(1) and (2), Florida Rules of Appellate Procedure.

Background:

On May 26, 2009, Citrus County adopted a small-scale development amendment modifying the future land use designation for a 9.9 acre parcel in Citrus County owned by Katherine's Bay, LLC ("Amendment"). The Amendment would change the future land use map classification of the subject parcel from Low Intensity Coastal and Lakes District to Recreational Vehicle Park District. The change in land use was requested to allow placement of a recreational vehicle park on the 9.9 acre parcel. The Amendment was challenged by Ronald J. Fagan and forwarded to the Division of Administrative Hearings (DOAH) for an administrative hearing.

On August 28, 2009, an administrative hearing was conducted in Inverness, Florida before a DOAH Administrative Law Judge. On October 9, 2009, Judge Donald R. Alexander entered a Recommended Order recommending that the Administration Commission enter a final order determining the Amendment to be not "in compliance." Intervenor filed exceptions to the Recommended Order through a Notice of Refiling on December 1, 2009. The Notice of Refiling was not filed within the timeframe provided in Administration Commission Rule 28-106.217(1), FAC.

At the January 26, 2010, Cabinet meeting, the Commission approved the staff recommendation and authorized the Secretary to enter a Final Order determining that the Citrus County Amendment was not "in compliance" in accordance with Sections 163.3187(3)(b)1 and 163.3184(1)(b), Florida Statutes, and that the Amendment had no legal effect. Katherine's Bay, LLC, filed an appeal of the Commission's Final Order to the

First District Court of Appeal. Upon consideration of the appeal, the First District Court of Appeal issued a Mandate and Opinion reversing the Commission's Final Order and remanding the proceeding to the Commission for reinstatement of the ordinance adopting the Amendment. As a result of the reversal, Katherine's Bay, LLC, is authorized to submit a motion for taxing of costs pursuant to Rule 9.400, Florida Rules of Appellate Procedure. Accordingly, a Motion to Tax Costs was submitted on January 14, 2011, by Katherine's Bay, LLC, and was supplemented with evidence of the payment of costs on May 19, 2011.

A Draft Final Order is presented to the Commission that complies with the direction of the First District Court of Appeal, reversing the January 29, 2010, Final Order and reinstating the Amendment adopted by Citrus County on May 26, 2009. Further, the Draft Final Order directs Ronald J. Fagan to reimburse Katherine's Bay, LLC, for costs in the amount of \$692.50.

Recommendation:

Approve and authorize the Secretary to enter the Draft Final Order Reversing Final Order and Granting Motion to Tax Costs.

Back-Up:

Administration Commission's Final Order issued on January 29, 2010.

First District Court of Appeal's Mandate and Opinion issued on December 30, 2010.

Motion to Tax Costs filed by Katherine's Bay, LLC, on January 14, 2011.

Supplemental filing providing evidence of payment of costs filed by Katherine's Bay, LLC, on May 19, 2011.

Rule 9.400, Costs and Attorneys' Fees, Florida Rules of Appellate Procedure

Memo to Cabinet Members.

Draft Final Order Reversing Final Order and Granting Motion to Tax Costs.