

# ADMINISTRATION COMMISSION AGENDA

June 9, 2009

1. **Consideration of a Recommended Order issued by the Division of Administrative Hearings in the proceeding of Department of Community Affairs (Petitioner) and Valerie Britt, Kathleen S. Brown, Mary F. and Sam Billotti, Kimberly A. Craft, Loretta Perrone, and Patricia T. Hairston (Intervenors) vs. City of Jacksonville (Respondent) and Westland Residential Development, LLC, McCumber Golf, Inc.; M.D. Moody & Sons, Inc.; Dunn Creek, LLC; Johnny I. Dudley, LLC; Baldwin Tradeplex, Inc.; L. Charles Mann; James M. and Fay S. Coleman; George Sayar; Skyline Realty Services, Inc.; HST Ventures, Inc.; R. Louise Kittrell, Inc.; Whitehouse Manor, Inc.; D.R. Horton-Jacksonville; Hassco, LLC; Hidden Creek Landing, LLC; Titan Land, LLC; Frazier Tremblay; and Adel Barin (Intervenors). (AC Case No. ACC-09-001, DOAH Case Nos. 07-3539GM and 08-4193GM).**

The issue in this consolidated proceeding is whether the City of Jacksonville's amendment to the Future Land Use Map (FLUM), also known as Ordinance No. 2007-355-E, and a related text amendment to Conservation/Coastal Management Element Policy 7.3.1 adopted by Ordinance No. 2008-315-E are in compliance.

City of Jacksonville Ordinance No. 2007-355-E

On May 14, 2007, the City of Jacksonville (City) adopted Ordinance No. 2007-355-E changing the land use designation for a 77.22-acre parcel from Water Dependent/Water Related and Agriculture IV to Community/General Commercial. (On the same date, the City adopted 19 other changes to the FLUM by separate ordinances.) The 77.22-acre parcel is owned by Intervenor, M.D. Moody and Sons, Inc., (Moody) and located at 13911 Atlantic Boulevard on the west side of the Intracoastal Waterway. If found to be in compliance, the land use change would potentially result in a net increase in development by 1,146 dwelling units and 200,245 square feet of nonresidential land use.

On August 1, 2007, the Department of Community Affairs (DCA) filed a Petition for Formal Administrative Hearing with the Division of Administrative Hearings (DOAH) alleging the Moody amendment was not in compliance. (Of the 19 amendments adopted by the City under separate ordinances, DCA challenged 17.) The DCA alleged that the Moody amendment conflicted with certain provisions within Chapter 163, FS, and Rule Chapter 9J-5, FAC, by increasing density in the Coastal High Hazard Area, impacting environmentally sensitive land, and impacting transportation facilities. Additionally, the DCA alleged the Moody amendment conflicted with the State Comprehensive Plan and the Northeast Florida Strategic Regional Policy Plan.

Intervention in support of DCA's position was granted for Valerie Britt, Kathleen S. Brown, Sarah Broadway, Mary F. and Sam Billotti, Patricia T. Hairston, Loretta Perrone, and Kimberly Craft. (Sarah Broadway withdrew from the proceeding in September, 2008.) Intervention in support of the FLUM amendment was granted for M.D. Moody & Sons, Inc.

City of Jacksonville Ordinance No. 2008-315-E

On June 10, 2008, the City of Jacksonville adopted Ordinance No. 2008-315-E, that modified the definition of Coastal High Hazard Area (CHHA) found in Conservation/Coastal Management Element Policy 7.3.1., by allowing site-specific data to be used to determine whether a parcel lies outside the CHHA.

On August 25, 2008, the DCA filed a Petition for Formal Administrative Hearing with DOAH alleging that the plan amendment was not in compliance as the amendment was inconsistent with the definition of CHHA in Section 163.3178(2)(h), FS; was inconsistent with Policy 7.3.1 and Map C-18 within the Element; was inconsistent with the State Comprehensive Plan; and conflicted with the Northeast Florida Strategic Regional Policy Plan.

Intervention in support of DCA's position was granted for Valerie Britt. Intervention in support of the text amendment was granted for M.D. Moody & Sons, Inc.

Consolidated Proceeding

On September 11, 2008, a motion was made to consolidate the FLUM amendment and the text amendment proceedings. The motion was granted on September 25, 2008, and reaffirmed on October 8, 2008.

An administrative hearing was conducted by DOAH Administrative Law Judge Donald R. Alexander on October 27 through 30, 2008, in Jacksonville, Florida. On January 12, 2009, Judge Alexander filed a Recommended Order with the Commission recommending the Commission enter a final order determining that the plan amendment adopted by Ordinance No. 2007-355-E is not in compliance and the plan amendment adopted by Ordinance No. 2008-315-E is in compliance. The parties filed exceptions to the DOAH Recommended Order and responses to the exceptions with the Commission.

**Staff Recommendation:**

To be distributed separately.

**Back-Up:**

DOAH Recommended Order received on January 14, 2009. (Distributed to Cabinet Aides under a memo dated January 23, 2009.)

Department of Community Affairs' Exceptions to the Recommended Order filed on January 27, 2009.

City of Jacksonville's and Intervenor M.D. Moody & Sons, Inc.'s Joint Exceptions to Recommended Order filed on January 27, 2009.

City of Jacksonville's and Intervenor M.D. Moody & Sons, Inc.'s Joint Response to the Department of Community Affairs' Exceptions to the Recommended Order filed on February 6, 2009.

Draft Final Order (To be distributed separately.)