

**ADMINISTRATION COMMISSION
AGENDA**

September 15, 2009

Attachments to the items below can be viewed at the following link:

<http://www.myflorida.com/myflorida/cabinet/adcom/index.html>

1. **Approval of the minutes of the July 28, 2009, meeting.**

2. **Consideration of a Determination of Non-Compliance issued by the Department of Community Affairs in the proceeding of Susan Woods and Karen Lynn Recio (Petitioners) vs. Marion County and Department of Community Affairs (Respondents) and Austin International Realty, LLC, Castro Realty Holdings, LLC, and Halcyon Hills, LLC (Intervenors). (AC Case No. ACC-09-002, DOAH Case No. 08-1576GM). (Continued from the July 28, 2009, Cabinet meeting.)**

The issue in this case is whether comprehensive plan future land use map amendment (FLUMA) 07-L25, adopted by Marion County Ordinance 07-31 on November 20, 2007, is “in compliance,” as defined in Section 163.3184(1)(b), Florida Statutes (2008). The amendment changed the FLUM designation on 378 acres of Urban Reserve and on 17.83 acres of Rural Land to Medium Density Residential. The Department of Community Affairs (Department) reviewed the FLUMA and published a Notice of Intent to find the amendment “in compliance.”

On March 14, 2008, Susan Woods and Karen Lynn Recio filed a petition for administrative hearing with the Division of Administrative Hearings (DOAH) challenging the amendment and the Department’s Notice of Intent. On May 6, 2008, Austin International Realty, LLC, Castro Realty Holdings, LLC, and Halcyon Hills, LLC, (Intervenors) owners of the property subject to the amendment, were granted leave to intervene.

During the course of discovery and preparation for the final hearing, an error in the compliance determination regarding the demonstration of a need for the land use change was brought to the attention of the Department. Prior to the commencement of the final hearing, the Department informed all parties of this error and announced that it could no longer support the County and Intervenors regarding the need issue. The Department specifically informed the parties that it would have to support the Petitioners’ contentions that there was no demonstrated need for the FLUMA as required by the Marion County Comprehensive Plan and State statute and rule. The Department also made this representation to the Administrative Law Judge on the record. The Department stipulated that non-compliance would have to be proven beyond fair debate under Section 163.3184(9)(a), Florida Statutes.

An administrative hearing was conducted by DOAH Administrative Law Judge J. Lawrence Johnston on October 29 and 30, 2008, in Ocala, Florida. Judge Johnston issued a Recommended Order on February 4, 2009, recommending that the Department of Community Affairs determine the amendment to be not “in compliance” and forward the matter to the Administration Commission for final action. Exceptions to the Recommended Order were filed by the Department, Marion County, and the Intervenors. Responses to Exceptions were filed by the Department, Petitioners, Marion County, and the Intervenors. The Department forwarded a Determination of Non-Compliance to the Administration Commission on March 26, 2009, making recommended rulings on the Exceptions to the Recommended Order and determining that the FLUMA is not “in compliance.”

Staff Recommendation:

Authorize the Secretary to enter the Draft Final Order.

Back-Up:

Department of Community Affairs’ Determination of Non-Compliance issued on March 26, 2009.

Draft Final Order.