

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM HOWARD SOLOMON,)
)
 Petitioner,)
)
and)
)
MANDARIN COMMUNITY CLUB,)
)
 Intervenor,)
)
vs.) Case No. 00-2089
)
FLORIDA COMMUNITIES TRUST)
)
 Respondent,)
)
and)
)
CITY OF JACKSONVILLE,)
)
 Intervenor.)
_____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on August 28 through 29, 2000, in Jacksonville, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner William Howard Solomon:

William Howard Solomon, Esquire
1625 Emerson Street
Jacksonville, Florida 32207

For Intervenor Mandarin Community Club:

William Howard Solomon, Esquire
1625 Emerson Street
Jacksonville, Florida 32207

For Respondent Florida Communities Trust:

Geoffrey T. Kirk, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

For Intervenor City of Jacksonville:

Karl J. Sanders, Esquire
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

STATEMENT OF THE ISSUES

The issues are whether Petitioner William Howard Solomon and Intervenor Mandarin Community Club have standing to challenge Respondent Florida Communities Trust's decision to approve an amendment to the management plan for a historical park, owned and operated by the Intervenor City of Jacksonville, and if so, whether Respondent Florida Communities Trust properly exercised its discretion to approve that decision.

PRELIMINARY STATEMENT

On January 26, 2000, the Governing Board of the Florida Communities Trust (Respondent, hereafter referred to as "FCT") held a public meeting to consider the City of Jacksonville's (Intervenor, hereafter referred to as "the City") proposed amendment to its management plan for the Walter Jones Historical

Park (hereafter referred to "the Park"). At that meeting, FCT voted unanimously to approve the City's request. The vote constituted final agency action and was subsequently published in the Florida Administrative Weekly on March 10, 2000.

On March 30, 2000, William Howard Solomon (Petitioner, hereafter referred to as "Mr. Solomon") filed a Petition for Administrative Proceedings with FCT. Said petition alleged that FCT's decision did not comply with the requirements of Section 267.061, Florida Statutes.

At its next regularly scheduled meeting on May 15, 2000, FCT voted to refer Mr. Solomon's petition to the Division of Administrative Hearings for a formal hearing pursuant to Section 120.57(1), Florida Statutes. FCT filed the petition with the Division of Administrative Hearings on May 17, 2000.

The Division of Administrative Hearings issued an Initial Order on May 22, 2000. FCT and Mr. Solomon filed unilateral responses to the Initial Order on June 2, 2000, and June 5, 2000, respectively.

On June 6, 2000, the undersigned issued a Notice of Hearing by Video Teleconference. Said notice scheduled the hearing for August 8, 2000.

On June 7, 2000, FCT filed an Answer and Affirmative Defenses. FCT's affirmative defenses included the following: (a) failure to state a cause of action; (b) estoppel; and (c)

lack of standing. Mr. Solomon filed a Reply and General Denial of Affirmative Defenses on August 16, 2000.

On June 19, 2000, Mr. Solomon filed an unopposed Motion for Continuance. An order dated June 21, 2000, granted the motion and rescheduled the hearing for August 28-29, 2000.

On June 23, 2000, the City filed a Motion to Intervene. This motion was granted by order dated July 13, 2000.

On July 21, 2000, the Mandarin Community Club (Intervenor, hereafter referred to as "MCC") filed a Motion to Intervene and Request for Preliminary Hearing on Standing. FCT filed a response in opposition to this motion on July 24, 2000. An order dated July 31, 2000, granted the MCC's Motion to Intervene subject to proof of standing during final hearing and denied the Request for Preliminary Hearing on Standing.

On August 24, 2000, FCT filed a Motion in Limine. When the hearing commenced, the undersigned heard oral arguments on this motion, reserving the right to rule on the admissibility of evidence at the time of its presentation.

During the hearing, Mr. Solomon and MCC, acting jointly, presented the testimony of the following witnesses: Barbara Mattick, Roy Hunt, Herschel E. Sheppard, William Jeter, Jr., Leslie Keys, Jerry Spinks, and Robin Robbins-Merritt. Mr. Solomon and MCC offered 24 joint exhibits that were accepted into evidence.

FCT presented the testimony of Anne Perry and Grant Gelhardt. FCT offered 12 exhibits that were accepted into evidence.

The City called Robbin Robbins-Merritt and Karen Jones Roumillat as witnesses. The City offered 9 exhibits that were admitted into evidence.

The court reporter filed the Transcript of the proceeding on October 2, 2000. The parties filed Proposed Findings of Fact and Conclusions of Law on October 12, 2000.

FINDINGS OF FACT

1. In 1993, the City applied to FCT for grant monies to acquire approximately 10 acres of land for the Park, which is located on the St. Johns River in a suburb of the City commonly known as "Mandarin." This project was assigned FCT Project No. 93-006-P3A.

2. The original management plan for the Park stated that the City was acquiring the Park for the purposes of: (a) preserving and protecting natural vegetation; (b) providing environmental and historical education; and (c) providing passive resource-based outdoor recreation.

3. On or about September 28, 1994, FCT approved the City's original management plan for the Park, which states as follows in part:

1. Introduction

This site is located on County Dock Road, accessible from Mandarin Road in the area of Jacksonville known as Mandarin. Submitted as County Dock Historical Park, the park will be officially known as Walter Jones Park.

The main purpose for the acquisition of this site is to preserve the historic home. This home was built around 1875 and includes contributing structures on the site such as the cypress barn, dated 1876, and outbuildings. . . .

The intent of the City is to provide a one-day tour in the Mandarin area which will include historic sites and structures along Mandarin Road. The focus of the tours will be on the interpretation of the park in relation to the history of the Mandarin area.

* * *

Currently located on the project site are three houses. The house which fronts Mandarin Road [hereafter referred to as the 1939 house] is appropriate housing for a security person. The second house is in disrepair and will need to be demolished. The third house is the historic Major William Webb home. The management of the project will center around the Webb home and historical aspects of the Mandarin area.

* * *

The City will request written approval from the Florida Communities Trust before undertaking any site alterations or physical improvements that are not addressed in the original approved management plan.

* * *

. . . The City is proposing a contractual agreement with the Museum of Science and History for the management of this site. . . .

* * *

. . . Security will be provided by an on-site manager located at the entrance of the project site. Security personnel generally consist of police officers which would provide on-site security and in turn, reside at the site [in the 1939 house].

The overall goal of the historic education is to teach the historical aspects of the site as well as the Mandarin area in general. The historic home was built circa 1875 and subsequently, a citrus operation and pier for loading crops on barges was in use. . . . It is anticipated that as an interpretive site, this project may be phased to include first an outdoor passive interpretation and, at a later date, active interpretation if deemed appropriate based on the first year assessments. These first year assessments will determine specific historic education programs based on the time period selected for interpretation. The long-term objective is to provide outdoor passive interpretation which would be coordinated with other historic sites in Mandarin. . . .

. . . This project is the site of the historic Major William Webb home, along with several remaining outbuildings. . . .

The significance of this site is not only in the home, but also in the presence of the contributing structures and the relationship to the Mandarin community of the 1880's. . . .

. . . The Museum of Science and History is interested in a satellite facility to their downtown Jacksonville location. Management

of the site would be coordinated with the Museum, acting as the managing entity for the physical maintenance and as coordinators of the education programs and volunteer staff. Several community groups are available and willing to assist in the project; Mandarin Community Club, Mandarin Women's Club, Mandarin Garden Club, and Mandarin Historical Society.

6. In November 1994, the City's Planning and Development Department, together with the Honorable Dick Kravitz, Councilman, filed an application for designation of the Park as a landmark or landmark site with the Jacksonville Historic Preservation Commission (hereafter referred to as JHPC). This application indicates that the "period of significance" for the Park is 1875 through 1945. The application describes the 1939 house, also known as the Mandarin Road House, as follows in part:

Located near the northwest corner of Mandarin Road and County Dock Road is a one and one half story wood frame house with horizontal wood siding. Facing Mandarin Road, this house features a small gable stoop porch, two gable dormers, and a porte cochere on the east side. . . . The actual construction date of this bungalow with Colonial Revival influences has not been determined. However, in 1933, eight lots were platted along Mandarin Road, and filed as the Edith Jones Subdivision. The house, based on its style, material and method of construction, was probably constructed in the 1930's. . . .

7. Around 1995, the City contracted with the University of Florida, College of Architecture, to document and research the

various buildings located at the Park. Hershel Shepard, an architect and professor at the University of Florida, participated in the study and assisted in the preparation of a report, detailing the historical research of the extant structures at the Park. The report did not reference the 1939 house as a structure needing preservation. Professor Shepard and his associates did not perform any formal study or cost benefit analysis regarding the possibility of the City building a museum behind the 1939 house.

8. On or about August 27, 1998, FCT approved a revised management plan for the Park. Under the revised plan, the City identified the 1939 house as being appropriate for possible future use as a museum and visitor center operated by the Mandarin Museum and Historical Society (hereafter referred as MMHS). The revised plan stated the City's intention to obtain a satisfactory historic house to be moved to the project site to house security personnel. The City intended to locate the additional historic home facing County Dock Road, on or near the location of the demolished John Woolfe house, otherwise known as the "Butterfly House."

9. The placement of the security residence on the site of the demolished John Woolfe house would provide closer protection for the historic Walter Jones farm structures located near the river and the county dock on the river. Moreover, placement of

the security residence at the proposed site did not interfere with the final park design that restricts the location of park amenities relating to identified wetlands and a conservation easement resulting from mitigation of wetlands impacted by a proposed pedestrian trail and boardwalks.

10. The City was unable to locate a suitable home that it could move to the proposed site to serve as a security residence. Additionally, low overhanging live oaks on Mandarin Road made a move to the proposed site by land impossible, and the water depth at the county dock would not allow access by barge.

11. In the meantime MMHS found the 1939 house to be unsuitable for use as a museum and visitor center for the following reasons: (a) the rooms of the house are very small; (b) the front door cannot be opened fully because of the placement of the stairs; (c) there is no handicapped accessibility; and (d) the structure basically would have to be gutted for use as a public building. Consequently, MMHS proposed that the 1939 house, which was already located on the site and being used as the residence of the security officer, be moved approximately 250 feet to the approved site for the security residence. MMHS also suggested that the City construct a new, site-specific structure for the museum and visitor center.

12. The City's Department of Parks, Recreation and Entertainment (hereafter referred to as the Parks Department) sought the approval of JHPC in Certificate of Appropriateness (COA) No. 99-17 to relocate the 1939 house to the vacant site of the demolished John Woolfe house facing County Dock Road. The City's Planning and Development Department prepared a staff report dated January 27, 1999, recommending that JHPC approve COA-99-17. The report states as follows in part:

Although constructed during the period of significance (1875-1945) identified in the Landmark and Landmark Site designation of the Major William W. Webb Farm, A/K/A, the Walter Jones Farm . . . the c. 1939 house was built on one of the eight lots along Mandarin Road subdivided by Edith Jones in 1933. Because of its age, style, and materials, the c. 1939 house is distinctive architecturally and historically from the pre-1900 farm buildings. Therefore it is the opinion of the Planning and Development Department that the c. 1939 house could be relocated to face County Dock Road without significantly impacting the remaining historic buildings located at the park.

13. JHPC subsequently considered COA-99-17, decided not to approve relocation of the house, then rescinded its decision and tabled COA-99-17 as an agenda item.

14. Early in February 1998, Jerry Spinks, as Chairman of JHPC, contacted Leslie Keys, Historical Resources Administrator in the St. Augustine Regional Office of the Department of State, Division of Historical Resources (hereafter referred to as DHR).

Mr. Spinks asked Ms. Keys to review the JHPC's tabled agenda item, COA-99-17, including the Planning and Development Department's staff report.

15. In a letter dated February 8, 1999, Ms. Keys stated as follows in part:

. . . While this building has merit as an example of 1930s frame vernacular building construction, it is outside the period of significance for the farm. In other words, this building does not assist in the understanding and portraying [of] the 19th century farm complex--which is the unique and important aspect of the property.

* * *

The city is to be commended for preserving the building and reusing it. The relocation recognizes that a building of another historic period, the early 20th century, can contribute to the site in a secondary capacity.

16. On or about May 12, 1999, the City's Parks Department filed new applications with JHPC for COAs, seeking the following: (a) in COA-99-159, to relocate the 1939 house to the vacant site of the demolished John Woolfe house facing County Dock Road within the boundaries of the Park; and (b) in COA-99-160, to construct a museum/education center within the Park.

17. The application for COA-99-159 included cost comparisons for the following: (a) in Option 1, renovation of the 1939 house for use as a museum and educational center and building a new house for a security residence; and (b) in Option

2, moving the 1939 house for continued use as a security residence and building a new use appropriate museum and education facility. The total cost for Option 1 was \$291,126. The total cost for Option 2 was \$266,000.

18. A report from Historic Property Associates, Inc. was attached to the application for COA-99-159 as Exhibit A. This report supported the City's position that relocation of the 1939 house would not impact any properties listed or eligible for listing on the National Register of Historic Places.

19. The City's Planning and Development Department issued a staff report dated May 26, 1999. This report recommended that the JHPC approve COA-99-159.

20. On June 23, 1999, the JHPC conducted a public hearing on the Parks Department applications. During this quasi-judicial proceeding, numerous persons testified for and against the proposed relocation of the 1939 house. At the close of the hearing, the JHPC voted to approve the COAs.

21. Mr. Solomon appealed the JHPC's decision to the City's Urban Affairs and Planning Committee (hereafter referred to as UAPC). On September 21, the UAPC conducted a public hearing to review the JHPC's approval of COA-99-159 and COA-99-160. During the quasi-judicial proceeding, the UAPC considered the record made before the JHPC and heard additional testimony for and against the relocation of the 1939 house from many witnesses.

The testimony included the reading of portions of the February 8, 1999, letter written by Ms. Keys. At the conclusion of the hearing, the UAPC voted to affirm the JHPC's decision to relocate the 1939 house.

22. The UAPC 's decision was thereafter appealed to the full Jacksonville City Council, which heard the matter on September 28, 1999. The City Council voted to affirm the decisions of the JHPC and UAPC. The City Council adopted Resolution 1999-880-A, which constituted final agency action approving COA-99-159 and COA-99-160.

23. Ms. Karen Jones-Roumillat is the great-granddaughter of Walter Jones. By letter dated September 28, 1999, Janet Matthews, Chief of the Bureau of Historic Preservation, DHR, and State Historic Preservation Officer, replied as follows, in part, to an inquiry from Ms. Jones-Roumillat:

Thank you for your letter regarding the relocation of the 1939 House within the Walter Jones Historical Park, which incorporates the Major William W. Webb Farm that dates from the 1870s. . . .

The information available to this office indicates that the period of significance for the Major William W. Webb Farm identified in the local designation report is 1875 to 1945. Given the construction date with the period of significance and the apparent high degree of physical integrity of the 1939 House, it must be considered to contribute to the significance of the property. On that basis, the 1939 House is

potentially eligible for the National Register as a contributing building in that historic complex.

According to the National Register criteria for evaluation, historic significance is embodied in location and setting as well as in the individual buildings and structures that contribute to it. The National Park Service advised that relocation of an historic property may adversely affect its historic significance, often rendering it ineligible for listing on the National Register.

Because the 1939 House is considered to be a significant element of the historic development of this site, its relocation must be considered to have an adverse effect on the overall significance of the property. For this reason, as well as best preservation practice advice, the 1939 House should be retained on its original site.

It is acknowledged, however, that the focus of the "archaeological and historical resource" component of the approved County Dock Road Historical Park Management Plan (Now Walter Jones Historical Park) involves the preservation and interpretation of the nineteenth century Webb Farm site, including the 1870s house, barn and other associated structures. The plan further indicates that the 1939 House may be used as a security residence. Thus, in the context of the currently approved plan, the 1939 House is of subordinate significance to the buildings and structures related to the Webb period of development of the site. If, on this basis, the City of Jacksonville determines that relocation of the 1939 House is necessary to the development of the Walter Jones Historical Park, it is the opinion of this office that the following conditions should be met:

24. On or about October 28, 1999, Mr. Solomon filed a Petition for Writ of Certiorari in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, Case No. 99-6403, to challenge the City Council's decision. By order dated November 3, 1999, the petition was dismissed without prejudice.

25. On or about November 23, 1999, Mr. Solomon filed an Amended Petition for Writ of Certiorari in Case No. 99-6403. The Circuit Court Judge subsequently entered a Final Order Denying Amended Petition for Writ of Certiorari. However, Mr. Solomon filed a motion for reconsideration, resulting in an Order Vacating Final Order Denying Amended Petition for Writ of Certiorari dated April 27, 2000.

26. On or about May 12, 2000, Mr. Solomon filed a Second Amended Petition for Writ of Certiorari. This petition raised due process issues. It also raised questions regarding the merits of the City's decision, including, but not limited to: (a) whether the City relied on incorrect information concerning the Park's period of significance as set forth in the February 8, 1999, letter from Ms. Keys; and (b) whether the City erroneously relied on the Keys letter as evidence that DHR supported the relocation of the 1939 house. Mr. Solomon included the September 28, 1999, letter from Ms. Matthews in the appendix to the Second Amended Petitioner for Writ of Certiorari

27. On July 7, 2000, the Circuit Court entered a Final Order Affirming Administrative Order in Circuit Court Case No. 99-6403. On October 26, 2000, the District Court of Appeal, First District, filed a per curiam opinion in Case No. 1D00-3258, denying Mr. Solomon's Petition for Writ of Certiorari.

28. In the meantime, the City had to obtain FCT's approval to modify the Park's management plan. By letter dated October 7, 1999, the City requested that FCT approve the relocation of the 1939 house for use as a security residence.

29. FCT's staff reviews all proposed management plans and all proposed revisions to those plans. FCT's staff also solicits comments, advisory in nature, from outside agencies with expertise in technical matters such as historic resources. In this case, FCT's staff sought DHR's opinion regarding the relocation of the 1939 house.

30. In a letter dated November 5, 1999, Ms. Matthews responded to FCT's request for comments. The letter states in part as follows:

. . . [I]t is our opinion that the 1939 House is potentially eligible for listing in the National Register of Historic Places as a contributing structure to a historic district encompassing the entire 10.3 acres of the site. This opinion is based on the following factors:

- a. The building's age clearly falls within the established period of significance for the site: 1875-1945.

(b) The building reflects a continuum of site development, a later period of the historic development of the property by the Webb and Jones families. In this regard, subdivision of the property in 1933 and construction of the 1939 House are representative of a significant change in the development history of the Mandarin community from farming to residential related to the 1921 completion of the Acosta Bridge and the economic conditions of the time.

(c) The building has not been significantly altered since its construction in 1939.

* * *

It is our further opinion that relocation of the 1939 House would have an adverse affect on the historic integrity of the individual structure, as well as that of the 10.3-acre property. In addition, the proposed relocation would further erode the historic character of Mandarin Road, removing one of the few remaining historic structure from this scenic corridor. [sic]

* * *

. . . While the applicant has presented an argument for the need of relocating the 1939 House, it is the opinion of this office that at least one prudent and feasible alternative to relocation is possible. Our architectural staff believes it possible to successfully integrate the 1939 House into a new museum compound by:

- a. Rehabilitating the 1939 House . . . to provide: (1) a series of museum galleries to present the history of the site and its relationship to the development of the region, and (2) an administrative office for the Mandarin Historical Society;
- b. Constructing a classroom and environmental education building to the north of the 1939 House, providing an

opportunity for broad vista of the wetlands to the west;

c. Incorporating the necessary accessibility ramp into the design of the new structure; and

d. Linking the historic building and the new classroom by an open covered connector at the elevation of their common finished floor elevation.

Further, it is our opinion that a modest residence can be constructed for the on-site security officer off of County Dock Road (on, or near, the site of the demolished "Butterfly House") without adversely affecting the historic integrity of the property. . . .

It is the opinion of this agency that the development approach described above offers a feasible alternative to the adverse effects associated with the proposed amended Management Plan. We strongly recommend that the proposed amendment be modified to retain the 1939 House on its original site.

31. FCT's staff completed its review of the City's proposed amendment to the management plan. The staff prepared a memorandum for FCT's Governing Board, including a recommendation that FCT deny the proposed modification to the management plan.

32. Approximately a week prior to the January 26, 2000, meeting of FCT's Governing Board, the members were given an agenda packet containing the staff's memorandum/recommendation, project summary and supporting materials. The supporting materials included twenty-seven letters received by FCT in support of the relocation of the 1939 house and two letters in opposition to the relocation of the 1939 house.

33. The agenda packet included two letters written by Mr. Solomon. These letters summarized Mr. Solomon's historic preservation and Chapter 267, Florida Statutes, arguments for the FCT Governing Board.

34. Also included in the packet was a letter dated November 29, 1999, from John Delaney, the City's Mayor. This letter stated in part as follows:

For several months, the City has been pursuing approval to relocate a newer house that is also located on the property closer to the farm for use as a security residence. This relocation is a key element in the development of the park.

* * *

Originally, a letter of support was obtained in February from Leslee Keys, Historical Resources Administrator for the St. Augustine Regional Preservation Office. This was followed by several letters in March and September from the Bureau of Historic Preservation in Tallahassee, which offered several opinions and suggestions. The March letter concluded that the relocation of the house was a local matter. We have always recognized the importance of DHR comments and incorporated the four recommendations found in the September 28th letter. This commitment was reflected in the October 7th letter to Ralph Cantral that accompanied our requested revisions to the Management Plan.

We were surprised that following final local approval, including support from this office, a letter was sent to FCT in November from Janet Snyder Matthews, new Chief of the Bureau of Historic Preservation opposing the house move.

35. One of the letters in the agenda packet was from Ms. Jones-Roumillat. The letter dated November 8, 1999, indicated her support for the relocation of the 1939 house.

36. Mr. Solomon received notice of the FCT Governing Board meeting scheduled for January 26, 2000. However, he was unable to attend the meeting.

37. At the meeting on January 26, 2000, several persons spoke for and against the request to relocate the 1939 house. The following persons spoke in favor of the relocation: Shorty Merrit (City Planner); Beth Meyer (MMHS); Jim Towart (MMHS); Susan Ford (MMHS); Karen Jones-Roumillat (MMHS and descendant of Walter Jones); and Karl Sanders (Assistant City Attorney). The following persons spoke against relocation of the house: Herschel Shepard (Architectural Consultant and former University of Florida Professor); Emily Lisska (Jacksonville Historical Society); William Jeter, Jr. (MCC); Ruth Daniels (MCC); Deanne Clark (MCC); David Ferro (DHR); Jan Matel (DHR); Barbara Mattick (DHR); and Frederick Gaske (DHR).

38. At the January 26, 2000, meeting, FCT's Governing Board heard conflicting opinions regarding the relocation of the 1939 house. These opinions were very similar to the testimony considered by the City's JHPC and UAPC when they voted to approve relocation of the house.

39. Moreover, the FCT Governing Board was fully apprised of DHR's opposition to the relocation of the house. The Governing Board was aware of DHR's position in the February 8, 1999, Keys letter, the September 28, 1999, DHR letter, and the November 5, 1999, DHR letter.

40. All persons speaking before FCT's Governing Board were treated courteously. The Governing Board gave everyone an opportunity to make his or her presentation in full. Petitioners do not allege any procedural due process violations by FCT.

41. After approximately one and one-half hours of public comment and deliberation, FCT's Governing Board voted 4-0 to approve the requested modification to the management plan. It is not unusual for FCT's Governing Board to disagree with its staff recommendation on any given matter.

42. Mr. Solomon filed a timely administrative petition, challenging the Governing Board's action. MCC intervened thereafter.

43. MCC was founded in 1923. Its first president was Walter Jones. MCC states its purpose as follows:

The mission of the Mandarin Community Club is to promote and insure the preservation, beautification, and environmental well-being of Mandarin; to provide educational programs and meetings for the club's membership and the community; to enhance the cultural and

recreational life of the citizens of Mandarin; and to maintain the historic structures and property owned by the club.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569, 120.57(1), and 380.507(11), Florida Statutes.

44. Mr. Solomon and MCC have the burden of proving by a preponderance of the evidence that they have standing to challenge FTC's decision to approve the relocation of the 1939 house, and if so, whether FCT properly exercised its discretion to approve that decision. Young v. Department of Community Affairs, 625 So. 2d 831, 833-35 (Fla. 1993); Section 120.57(1)(j), Florida Statutes.

45. Section 380.502(1), Florida Statutes, states as follows in pertinent part:

380.502 Legislative findings and intent.--
(1) The Legislature finds the conservation of natural areas is vital to the state's economy and ecology. . . . Finally, the Legislature finds that the quality of life, environmental quality, as well as the viability and vitality of the urban areas of this state are directly linked to urban open space and greenways. The creation of greenways; expansion of green spaces; enhancement of recreation areas; and protection and restoration of urban lakes, rivers, and watersheds in the urban areas of this state are necessary to link populated

areas with natural areas, preserve unique
cultural and heritage sites

46. The Legislature established FCT as a non-regulatory state agency to provide financial and technical assistance to local governments to carry out projects and activities and to develop programs authorized by Chapter 380, Part III, Florida Statutes. Section 380.502(3)(b), Florida Statutes. Its governing body consists of the Secretary of the Department of Community Affairs, the Secretary of the Department of Environmental Protection, and three members of the public, appointed by the Governor and subject to Senate confirmation. Section 380.504(1), Florida Statutes.

47. Section 380.508, Florida Statutes, provides as follows in relevant part:

(3) In accordance with procedures adopted by the trust, local governments and nonprofit organizations may propose projects for the trust to consider for funding or technical assistance. . . .

(4) Projects or activities which the trust undertakes, coordinates, or funds in any manner shall comply with the following guidelines:

* * *

(e) The trust shall cooperate with local governments, state agencies, federal agencies, and nonprofit organizations in ensuring the reservation of lands for parks, recreation, fish and wildlife habitat, historical preservation, or scientific study. . . .

(5) The governing body of the trust shall approve projects, project plans, grants, and loans according to rules which it shall have adopted and which are consistent with the provisions of this part. . . .

* * *

(8) The trust shall coordinate its activities with other state agencies responsible for land use, environmental protection, and land acquisition to avoid unnecessary duplication and to solicit the help and expertise of existing state personnel.

48. After receiving conceptual approval from FCT, applicants for grant funds must prepare and furnish FCT with a project plan. Rule 9K-4.0011, Florida Administrative Code. The project plan must include the following among other things:

A management plan which at a minimum sets forth how the site will be managed to further the purposes of the project, a description of all planned improvements to the project site, the costs and the funding sources, and the management entity and its funding sources. . . .

Rule 9K-4.011(1)(b), Florida Administrative Code.

49. The FCT governing body decides whether to approve or reject the project plan, of which the final management plan is a part. Rule 9K-4.0011(2), Florida Administrative Code. Consequently, the FCT governing body must approve or reject any modification of the management plan.

50. Section 267.061(2), Florida Statutes, states as follows in pertinent part:

(2) RESPONSIBILITIES OF STATE AGENCIES OF
THE EXECUTIVE BRANCH.--

* * *

(b) Each state agency of the executive branch shall initiate measures in consultation with the division [DHR] to assure that where, as a result of state action or assistance carried out by such agency, a historic property is to be demolished or substantially altered in a way which adversely affects the character, form, integrity, or other qualities which contribute to historical, architectural, or archaeological value of the property, timely steps are taken to determine that no feasible and prudent alternative to the proposed demolition or alteration exists, and, where no such alternative is determined to exist, to assure that timely steps are taken either to avoid or mitigate the adverse effects, or to undertake an appropriate archaeological salvage excavation or other recovery action to document the property as it existed prior to demolition or alteration.

(c) In consultation with the division [DHR], each state agency of the executive branch shall establish a program to locate, inventory, and evaluate all historic properties under the agency's ownership or control that appear to qualify for the National Register. Each such agency shall exercise caution to assure that any such historic property is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

51. In this case, Mr. Solomon, in his individual capacity, does not have standing to challenge the decision of FCT's Governing Board. In other words, he has not proved that his

"substantial interests will be affected by the proposed agency action." Sections 120.52(12) and 120.569(1), Florida Statutes.

52. Under Agrico Chemical Co. v. Department of Environmental Protection, 406 So. 2d 478 (Fla. 2nd DCA 1981), Mr. Solomon must show that: (a) he will suffer an injury in fact which is of sufficient immediacy to entitle him to a formal administrative hearing; and (b) his substantial injury is of the type or nature which the proceeding is designed to protect. Mr. Solomon fails to prove standing under the first prong of this test.

53. Mr. Solomon asserts that he has standing to bring this action for the following reasons:

- a. He resides in close proximity to the 1939 house and travels by it on a daily basis.
- b. He elected to purchase his home because of the historic homes and historic features along Mandarin Road.
- c. The 1939 house and its location along Mandarin Road contributed significantly to his home purchase decision and his perception of the neighborhood as having old village charm and historic characteristics.
- d. He would suffer great distress and have a sick feeling if the 1939 house were to be moved.
- e. Mandarin's history as depicted by historic properties of great importance to him, and he has a substantial interest in preserving the history of his neighborhood.
- f. His business interests in providing historical tours on or near the historical park would be adversely affected if the 1939 house were to be moved.

g. The historical value of the property would be diminished thus causing him to suffer if the 1939 house were to be moved.

54. Mr. Solomon concedes that he has no contractual or privity relationship with the City concerning the park. He does not claim that moving the 1939 house will decrease the fair market value of his home. He presented no persuasive details as to how his business of conducting historical tours in the Mandarin community and on the St. Johns River would be damaged by the relocation of the 1939 house. The good feelings he has when he drives by the 1939 house and other historical buildings along Mandarin Road do not constitute a substantial injury in fact. The sick feelings that Mr. Solomon would have if the City were to relocate the building, regardless of their sincerity, are too speculative to confer standing.

55. On the other hand, MCC has met its burden of proving its standing to bring this action. "To meet the requirement of standing under the APA [Administrative Procedure Act], an association must demonstrate that a substantial number of its members would have standing." Friends of the Everglades, Inc. v. Board of Trustees of the Internal Improvement Trust Fund, 595 So. 2d 186, 188 (Fla. 1st DCA 1992) quoting Florida Home Builders Ass'n v. Department of Labor, 412 So. 2d 351 (Fla. 1982). "To properly apply the Agrico test, [one] must analyze both the type and nature of the injury asserted and the purpose

and scope of the administrative proceeding." Friends of the Everglades, 595 So. 2nd at 189.

56. MCC bases its standing on the following relevant facts:

- a. MCC will suffer direct injury to its reputation and its mission of preserving the historical resources of the Mandarin community if the 1939 house is moved.
- b. Moving the 1939 house would adversely affect MCC's ability to promote and ensure historic preservation in the Mandarin Community.

The greater weight of the evidence indicates that MCC will not be deterred in its efforts to preserve the historical structures in the Mandarin community if the 1939 house is moved. Competent evidence indicates that MCC will continue to be respected as organization interested in the historical preservation of Mandarin. Relocation of the 1939 house will not change MCC's mission, but as discussed below, it may adversely impact the club's interest in promoting and ensuring historic preservation in Mandarin.

57. During the hearing, Mr. Jeter, a member of MCC, opined as follows:

[T]he club is an advocate of the historic integrity of Mandarin and we believe that the historic integrity of Mandarin will be impaired if the [1939 house] is moved. We believe that the city's ordinance regarding the designation of local historic sites will be compromised if [the 1939 house] is moved. We believe that future protection of the

historical monuments in Mandarin and Jacksonville as a whole, for that matter, will be compromised if it is moved.

The record here provides no persuasive evidence to support these allegations. Moreover, FCT has no jurisdiction to consider the alleged impact on the City's ordinance regarding the designation of local historic sites.

58. MCC argues that its financial interests would be damaged if the City relocates the house. There is no persuasive evidence to support this allegation.

59. MCC argues that it has standing because the City involved the club and its members in establishing the Park. There is no merit to this argument. Under Friends of the Everglades, 595 So. 2d at 189, MCC cannot assert standing based on its voluntary efforts toward the Park's creation.

60. Like Mr. Solomon, MCC admits that it does not have any contractual or privity relationship with the City regarding the Park. The lack of MCC's legal or equitable ownership interest in the Park does not necessarily preclude standing. In Friends of the Everglades, 595 So. 2d at 189, the Court stated as follows:

While property ownership in a particular location may be a factor in establishing substantial injury in certain types of proceedings, it is not necessarily a factor in all proceedings. The nature of the injury which is required to demonstrate standing will be determined by the statute

which defines the scope or nature of the proceeding.

61. During the hearing, MCC presented evidence that moving the 1939 house would preclude or impair MCC's use of the house to accurately demonstrate the change in economic development of the area and the change in the principle means of transportation over time. To the members of MCC, the exact location of the 1939 house on Mandarin Road is necessary to show how Mandarin evolved from a farming settlement on the river in the 1800s to a residential community along Mandarin Road during the depression of the 1930s. According to MCC, the existence of the house on Mandarin Road allows the club to educate the public about the relationship between two significant eras in the development of Mandarin.

62. In Friends of the Everglades, 595 So. 2d at 190, the petitioner alleged that its members, who lived near the subject property, were using the property for recreation and educational purposes consistent with the intent of Section 253.023, Florida Statutes. The petitioner in Friends of the Everglades also alleged that its members would no longer be able to use the property for these purposes if the property was used as a juvenile facility. The Court held that the petitioner had "alleged sufficient facts, if determined to be true, to constitute injury of the type which [Section 253.023, Florida

Statutes] is designed to protect" Friends of the Everglades,
595 So. 2d at 190.

63. Here as in Friends of the Everglades, the nature of MCC's alleged "use" of the 1939 house in its present location is the type of interest that the proceeding before FCT's Governing Board was designed to protect. Relocation of the 1939 house may impair MCC's alleged future "ability to use" the house as an interpretive historical property.

64. The interests of MCC were well represented in the local proceedings before the JHPC and UAPC. Those proceedings were conducted pursuant to a local ordinance. MCC was not a party to the subsequent judicial proceedings that reviewed the City's action in approving COA-99-159. The local proceedings and the subsequent judicial proceedings were not designed to ensure that FCT acted in accordance with the legislative mandate set forth in Chapter 380, Part III, and Section 267.061, Florida Statutes. Therefore, MCC's claims are not barred by legal theories involving election of remedies, collateral estoppel, or res judicata.

65. On the merits of the case, there is no persuasive evidence that FCT's Governing Board abused its discretion in approving the relocation of the 1939 house. FCT's Governing Board did not act arbitrarily, capriciously, dishonestly, or illegally in approving the requested change to the management

plan of the Park. Contrary to Mr. Solomon's assertions, FCT did not merely rubber stamp action taken by the City.

66. FCT considered differing opinions as to whether the relocation of the house would destroy its historical integrity or adversely affect the historical integrity of the Park as a whole. FCT also considered conflicting evidence regarding the existence of feasible and prudent alternatives to relocation of the building. Finally, FCT heard contrary arguments whether the proposed amendment to the management plan would have an adverse effect on properties listed or eligible for listing on the National Register of Historic Places.

67. Competent evidence indicates that the extensive alterations and expansions necessary to convert the 1939 house into a visitors' center and museum would significantly affect its individual architectural and historic integrity, as well as its contribution to the entire historic site. On the other hand, relocating the house to serve in its original capacity as a residence preserves its architectural and historical integrity to the fullest extent possible, while allowing the City to construct a site-appropriate museum and visitors' center. The proposed modification of the management plan incorporates safeguards that allow the 1939 house to remain a contributing element to the historical integrity of the Park.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That FCT enter a final order dismissing the Petition for Administrative Proceedings.

DONE AND ENTERED this 14th day of November, 2000, in Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 14th day of November, 2000.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.