STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SMART PLANNING AND GROWTH COALITION, Appellant, vs. MONROE COUNTY PLANNING COMMISSION, Appellee.	)	Case No. 03-1480

FINAL ORDER

Appellant, Smart Planning and Growth Coalition (Coalition), seeks review of Monroe County Planning Commission (Commission) Resolution No. P10-03, which allocates commercial floor area under Monroe County's Non-Residential Rate of Growth Ordinance (NROGO), Ordinance No. 032-2001, now codified as Section 9.5-124, et seq., Monroe County Code (M.C.C.). Resolution No. P10-03 is dated March 12, 2003, and this appeal was timely filed.

In its Initial Brief, the Coalition asserted essentially that, because Section 9.5-124(a)(5) of the NROGO ordinance requires allocations to be made "based on the goals, objectives and policies of the comprehensive plan and the Livable CommuniKeys master plans," and because no such master plans have been adopted as yet, no NROGO allocations can be made at this

time. The Coalition also asserted: that, since there are no such master plans, the NROGO allocations under appeal would be inconsistent with Monroe County Comprehensive Plan Future Land Use Element Objective 101.20 and Policy 101.20.1, which essentially require development of Community Master Plans to guide future development; and that Section 163.3194(1)(a) and (3)(b), Florida Statutes (2002), requires "all development" and "development orders" to be consistent with the local comprehensive plan and "all other criteria enumerated by the local government." Finally, the Coalition asserted that the Commission violated Section 9.5-45(c), M.C.C., by not posting notice of the NROGO allocation hearing at the properties "subject to the hearing."

In its Answer Brief, the Commission first attacked the Coalition's standing to appeal as an "aggrieved or adversely affected party" under the definition in Section 163.3215(2), Florida Statutes (2002). Next, the Commission contended that neither Section 163.3194 nor Section 9.5-45(c), M.C.C., applies because NROGO allocations are not "development," "development orders," or "development approvals." Finally, the Commission contended that community master plans are not "mandatory"--i.e., are not indispensable to allocation of NROGO floor area.

In its Reply Brief, the Coalition asserted essentially both that it has standing, and that both Section 163.3194, Florida

Statutes, and Section 9.5-45(c), M.C.C., apply because NROGO allocations are "development approvals" and "development orders." The Coalition also reasserted its position that community master plans are indispensable to NROGO allocations.

None of the briefs addressed the jurisdiction of the Division of Administrative Hearings (DOAH), which the Administrative Law Judge (ALJ) raised at the outset of oral argument, and which is dispositive.

DOAH acquires jurisdiction over appeals of this nature only by contract and under Article XIV, Section 9.5-535, M.C.C. By contract, DOAH ALJs act as hearing officers for Monroe County under Section 9.5-535, which provides: "Hearing officers shall review by appeal planning commission action when authorized by the Monroe County land development regulations or chapter 19, Monroe County Code." (Emphasis added.) For example, Sections 9.5-69(e) and 9.5-521(f), M.C.C., authorize hearing officer appeals from action of the Commission deciding an appeal to the Commission that was taken and heard under the authority of Sections 9.5-69(c), which is the appeal procedure specified for major conditional uses, or 9.5-521(a)-(e), which is the appeal procedure specified by Section 9.5-68(f) for minor conditional uses and also generally available for "appeals from any decision, determination or interpretation by any administrative official . . . ." But Resolution P10-03 was not action on such

an appeal to the Commission; rather, it was action taken by the Commission in the first instance to allocate NROGO floor area under Section 9.5-124, M.C.C. There does not appear to be any authority in the land development regulations or anywhere in the Monroe County Code for hearing officer appeals of NROGO allocations by the Commission. For that reason, DOAH does not have jurisdiction, and this appeal is DISMISSED.

DONE AND ORDERED this 15th day of August, 2003, in Tallahassee, Leon County, Florida.

J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of August, 2003.

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NOTICE OF RIGHTS

Pursuant to Article XIV, Section 9.5-540(c), M.C.C., this Final Order is "the final administrative action of Monroe County." It is subject to judicial review by common law petition for writ of certiorari to the circuit court in the appropriate judicial circuit.