

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HINOTE CONSTRUCTION,)
)
 Appellant,)
)
 vs.) Case No. 03-4722
) (Resolution P30-03)
 MONROE COUNTY PLANNING)
 COMMISSION,)
)
 Appellee,)
)
 and)
)
 SMART PLANNING AND GROWTH)
 COALITION,)
)
 Intervenor.)
 _____)

FINAL ORDER

On June 2, 2004, a Partial Final Order (Final as to Resolution P29-03) was entered in this case. In addition to disposing of the appeal from Resolution P29-03 of the Monroe County Planning Commission (Planning Commission), it also: granted Hinote Construction's (Hinote's) Motion to Vacate Order Dismissing [Its] Appeal [from the Planning Commission's Resolution P30-03, which denied Hinote's Application for Transfer of Development Rights to receive the transfer of commercial floor area from John C. Moore (Moore) (so as to avoid application of the Non-residential Rate of Growth Ordinance to Hinote's Walgreen Pharmacy project)]; denied the Joint Motion

[filed by Hinote and the Planning Commission] for Entry of an Order Consistent with the Parties' Settlement Agreement; reinstated Hinote's appeal; and granted Smart Planning and Growth Coalition (Smart Planning, or Intervenor) the right to intervene as an appellee. Hinote's Initial Brief was filed on July 19, 2004.

On July 26, 2004, an Order Granting Counsel for Intervenor Leave to Withdraw and Extending Time for Answer Briefs was entered in this case. It extended the time for answer briefs to September 9, 2004. It also ordered: "Within 15 days, the Intervenor shall confirm in writing its actual, legal name and corporate status so that the caption can be changed accordingly." It also ordered: "[I]f no attorney makes an appearance on behalf of the Intervenor within 15 days, the parties shall file (jointly, if appropriate) a written brief within 25 days stating and supporting their position or respective positions as to whether the Intervenor is required to be represented by an attorney in this appeal."

On July 27, 2004, an Order to Show Cause was entered in this case. It ordered the parties to show cause on or before September 9, 2004, why Hinote's appeal from the Planning Commission's Resolution P30-03 should not be dismissed for lack of subject matter jurisdiction. It specifically provided that it did not toll the time for filing answer briefs.

On September 1, 2004, Hinote and the Planning Commission filed a Joint Memorandum of Law Pursuant to Order to Show Cause (taking the position that jurisdiction over Hinote's appeal exists). The Intervenor did not respond to the Order to Show Cause.

On September 2, 2004, Hinote filed a Memorandum on Whether Intervenor Is Required to Be Represented by an Attorney (taking the position that the Intervenor is not required to be represented by an attorney in this appeal). Neither of the other parties responded on this issue.

On September 9, 2004, the Planning Commission filed a Notice Conceding Error and Waiver of Answer Brief. The Intervenor did not file an answer brief.

On September 17, 2004, a Second Order to Show Cause was entered, which required the Intervenor to show cause in writing (i.e., file a written explanation) on or before September 27, 2004, why its intervention should not be dismissed for failure to respond to the Orders entered on July 26 and 27, 2004, and for failure to file an answer brief, and why the Planning Commission's Resolution P30-03 should not be reversed without the necessity of oral argument, based upon the Planning Commission's confession of error. The Intervenor has not responded to the Second Order to Show Cause.

Based on the foregoing, and because Hinote and the Planning Commission adequately explained in their filing on September 1, 2004, why jurisdiction over Hinote's appeal exists, the Planning Commission's Resolution P30-03 is reversed at this time based on the Planning Commission's confession of error, and Hinote's Application for Transfer of Development Rights to receive the transfer of commercial floor area from Moore is granted. (The Telephonic Motion Hearing on subordinate issues scheduled for September 30, 2004, is canceled as unnecessary in light of this Final Order.)

DONE AND ORDERED this 29th day of September, 2004, 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 29th day of September, 2004.

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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" and is subject to judicial review by common law petition for writ of certiorari to the circuit court in the appropriate judicial circuit.