

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DON AND PAMELA ASHLEY, )  
 )  
 Petitioners, )  
 )  
 vs. ) Case Nos. 05-2361GM  
 ) 05-2730GM  
 DEPARTMENT OF COMMUNITY AFFAIRS )  
 and FRANKLIN COUNTY, )  
 )  
 Respondents, )  
 )  
 and )  
 )  
 ST. JOE COMPANY )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER  
AFTER SECOND REMAND

On October 20, 2008, the Administration Commission entered an Order Vacating Final Order in Part and Remanding in Part (Remand) in this case. The Remand requests further action consistent with the opinion and mandate in Ashley v. State of Florida, Administration Commission, 976 So. 2d 1130 (Fla. 1st DCA 2007). The court held that the Administration Commission's Final Order (and the adopted Recommended Order, as supplemented after a previous remand) erred in ruling that Franklin County's Rural Village and Conservation Residential future land use categories were not mixed-use categories, which are subject to the additional mandatory planning requirements in Florida Administrative Code Rule 9J-5.006(4)(c). The court remanded to

the Administration Commission for further proceedings to determine whether Franklin County's Rural Village and Conservation Residential future land use categories comply with standards for mixed-use future land use categories in Rule 9J-5.006(4)(c).

On November 6, 2008, a telephonic status conference requested by the parties was held, and it was determined that no additional evidence was necessary, and the parties' requests to have until November 26, 2008, to file proposed orders and argument was granted. The parties' proposed orders and argument have been considered in the preparation of this Supplement to Recommended Order on Remand.

The determinations requested by the Administration Commission having been made, the following changes are made to Findings of Fact and Conclusions of Law in the Recommended Order entered on June 12, 2006 (which was supplemented after remand on August 11, 2006, and which in all other respects remains unchanged):

FINDINGS OF FACT

\* \* \*

59. As transmitted, the ConRes FLUMA was 6,531 acres to the east of RV and along the Ochlocknee River and Bay. As adopted, it is 2,500 acres. The parts of the transmitted version adjacent to RV and along the river and Bear Creek were eliminated in the adopted version. The land is presently "Agriculture" (with

residential development allowed at 1 DU/40 acres); the land is used for silviculture. As described in FLUEP 2.2(m), ConRes is generally intended for large, private tracts of land that are appropriate for low density residential development and the protection of natural and cultural resources. A stated important objective is to allow for low density residential development that accentuates and celebrates the natural environment and is designed to fit into the natural setting instead of altering the natural setting to fit the design of the development. It allows detached SF residential use, passive and active recreational uses, related infrastructure, silviculture, and accessory use for residents and guests, and other similar or compatible uses. Free-standing nonresidential or commercial uses intended to serve non-residents are not permitted. Neither "active" nor "passive" recreational uses are defined in FLUEP 2.2(m). "Timeshare" or "vacation rentals" may be allowed. Maximum gross density is 1 DU/5 gross acres, and maximum overall impervious surface coverage cannot exceed 15 percent of the land area. The policy includes no FAR or any other adequate intensity standard for non-residential uses in the ConRes category. Septic tanks are allowed but may not be located within 500 feet of the Ochlocknee River, Ochlocknee Bay, or Bear Creek. "Aerobic systems" to provide a higher level of treatment apparently are not required, as they are on St. George Island and Alligator Point. IEP 1.2 states: "The County shall adopt a policy that mandates aerobic

septic systems on a county-wide basis." Apparently, this has not yet occurred. SMSs must meet OFW standards.

\* \* \*

64. Since FLUEP 2.25 does not apply to the RV and ConRes future land use categories, those categories fail to provide a percentage distribution or other objective measures of the mix of land uses.

65. As indicated in Finding 59, FLUEP 2.2(m) disallows "free-standing non-residential or commercial uses" in ConRes if "intended to serve non-residents." By negative implication, those uses are allowed if intended to serve residents. Under this policy, ConRes has an impervious surface ratio limitation of 15 percent, but there is no FAR or other adequate intensity standard for the non-residential uses implicitly allowed in the ConRes category.

66. On the evidence presented, it was proven beyond fair debate that the RV and ConRes future land use categories create mixed-use land use categories without the percentage distribution among the mix of uses, or other objective measurement. The ConRes category also lacks an adequate intensity standard for non-residential uses. In all other respects, the RV, ConRes, and other FLUMAs and related policies in the 2020 Plan comply with the mixed-use category standards.

\* \* \*

CONCLUSIONS OF LAW

\* \* \*

103. As found, most of the issues raised by Petitioners under the compliance criteria were at least fairly debatable. However, Petitioners proved beyond fair debate that, without a CIE, the 2020 Plan update is not "in compliance." In addition, it was proven beyond fair debate that the 2020 Plan's HEO 2 and 3 and CHHA are inaccurate and inconsistent with compliance criteria. In addition, to be "in compliance," deleting FLUEPs 11.12 and 11.13 should await a finding that the rest of the 2020 Plan is "in compliance." Finally, it was proven beyond fair debate that Franklin County's RV and ConRes future land use categories fail to provide a percentage distribution or other objective measures of the mix of land uses, and that ConRes does not have FAR or any other adequate intensity standard for its non-residential uses, as required by Florida Administrative Code Rule 9J-5.006(4)(c).

\* \* \*

DONE AND ENTERED this 4th day of December, 2008, in  
Tallahassee, Leon County, Florida.



---

J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of December, 2008.

COPIES FURNISHED:

Barbara Leighty, Clerk  
Transportation and Economic  
Development Policy Unit  
The Capitol, Room 1801  
Tallahassee, Florida 32399-0001

Jason Gonzalez, General Counsel  
Office of the Governor  
The Capitol, Suite 209  
Tallahassee, Florida 32399-0001

Thomas M. Shuler, Esquire  
Shuler & Shuler  
Post Office Box 850  
Apalachicola, Florida 32329

Ross S. Burnaman, Esquire  
1018 Holland Drive  
Tallahassee, Florida 32301-4508

Don Ashley  
Post Office Box 430  
Sopchoppy, Florida 32358

Kelly A. Martinson, Esquire  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

Bryan W. Duke, Esquire  
3800 Esplanade Way, Suite 100  
Tallahassee, Florida 32311