

Third District Court of Appeal

State of Florida, January Term, A.D. 2007

Opinion filed May 2, 2007.

Not final until disposition of timely filed motion for rehearing

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DIVISION OF
ADMINISTRATIVE
HEARINGS

No. 3D06-1718

Lower Tribunal Nos. 06-918, 06-1548

**Gateway Southeast Properties, Inc.,
and City of Doral,**
Appellants,

vs.

**Department of Community Affairs, Town of Medley, and Waste
Management, Inc. of Florida,**
Appellees.

An Appeal from the Division of Administrative Hearings.

Shubin & Bass and Elaine D. Walter and Jeffrey S. Bass and Lucinda A. Hofmann; John J. Hearn; Goren, Cherof, Doody & Ezrol and Michael D. Cirullo, Jr., for appellants.

Roth, Rousso & Katsman and Barbara J. Riesberg; White & Case and Douglas M. Halsey and Evan M. Goldenberg and Mark B. Martinez; Richard E. Shine, for appellees.

Before GREEN and SHEPHERD, JJ., and SCHWARTZ, Senior Judge.

We reverse the Summary Final Order of the Division of Administrative Hearings, determining that the Town of Medley's Ordinance C-306 is consistent with the Town's Comprehensive Plan. Ordinance C-306 permits expansion of a non-conforming use, which the Comprehensive Plan destined to be phased out. This violates the Florida Growth Management Act's dictates that local plans be "implemented through the adoption of land development regulations that are consistent with the plan." Bd. of County Comm'rs of Brevard County v. Snyder, 627 So. 2d 469, 473 (Fla. 1993)(emphasis added); §163.3202, Fla. Stat. (2006). Here, as the Ordinance unequivocally "deviates or departs" from the parameters of the Plan, Machado v. Musgrove, 519 So. 2d 629, 634 (Fla. 3d DCA 1987), we cannot hold that it is consistent. See City of Miami Beach v. Chisolm Props. S. Beach, Inc., 830 So. 2d 842, 843 (Fla. 3d DCA 2002)(Schwartz, C.J., specially concurring).

We therefore reverse the Summary Final Order and remand with instructions to grant Gateway's Motion for Summary Final Order.