Final Order Number DCA10-GM-013

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

CALVIN AND BECKY BABCOCK,
JOHN AND JEAN BRITTL, and
PETER AND PENNY WETTERMANN,

Petitioners,

v.

DOAH Case No. 08-0679GM

MARION COUNTY and DEPARTMENT
OF COMMUNITY AFFAIRS,

Respondents,

and

GOLDEN OAKS 484, LLC, and ST.
LUCIE SQUARE INVESTORS, LLC

Intervenors.
_____/

FINAL ORDER

This matter was considered by the Secretary of the Department of Community Affairs following receipt of a Recommended Order issued by an Administrative Law Judge of the Division of Administrative Hearings. A copy of the Recommended Order is appended to this Final Order as Exhibit A.

Background and Summary of Proceedings

On November 20, 2007, the Marion County (County) Board of County Commissioners adopted plan amendments designated 07-L08 and 07-L39.

The Department of Community Affairs (DCA or Department) reviewed all of the amendments, and on February 8, 2008, the

Filed March 8, 2011 2:17 PM Division of Administrative Hearings

Department filed a Petition for Hearing including a Statement of Intent finding the amendments not "in compliance."

The Babcocks, Brittls, and Wettermanns intervened in support of the Department, and Golden Oaks 484, LLC, and St. Lucie Square Investors, LLC, owners and developers of the subject 359.30 acres, intervened in support of Marion County.

The County, Department, and owners/developers entered into a stipulated settlement agreement. The County revised its capital improvements schedule, which addressed DCA's concerns about transportation impacts, and supplied additional information to address DCA's concerns about urban sprawl. On May 13, 2009, the Department found the plan amendments "in compliance."

The parties were realigned, with the Babcocks, Brittls, and Wettermanns as petitioners maintaining that plan amendments 07-L08 and 07-L39 were not "in compliance" because they constituted urban sprawl.

The final hearing was held on October 1, 2009, in Marion County. Upon consideration of the evidence and post-hearing filings, the Administrative Law Judge (ALJ) entered a Recommended Order rejecting all of the allegations raised in the Petition. The Order recommends that the Department find the Amendment "in compliance."

The parties did not file exceptions to the Recommended

Order.

Standard of Review of Recommended Order

The Administrative Procedure Act contemplates that the Department will adopt an Administrative Law Judge's Recommended Order as the agency's Final Order in most proceedings. To this end, the Department has been granted only limited authority to reject or modify findings of fact in a Recommended Order.

> Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Fla. Stat. § 120.57(1)(l).

Absent a demonstration that the underlying administrative proceeding departed from essential requirements of law, "[a]n ALJ's findings cannot be rejected unless there is no competent, substantial evidence from which the findings could reasonably be inferred." Prysi v. Dep't of Health, 823 So. 2d 823, 825 (Fla. 1st DCA 2002)(citations omitted). In determining whether challenged findings are supported by the record in accord with this standard, the Department may not reweigh the evidence or judge the credibility of witnesses, both tasks being within the

sole province of the ALJ as the finder of fact. See Heifetz v. Dep't of Bus. Reg., 475 So. 2d 1277, 1281-83 (Fla. 1st DCA 1985). Additionally, it is the function of the ALJ, not the Department, to draw permissible inferences from the evidence and to reach ultimate findings of fact based on competent substantial evidence. Id.

The Administrative Procedure Act also specifies the manner in which the Department is to address conclusions of law in a Recommended Order.

> The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

Fla. Stat. § 120.57(1)(l); DeWitt v. Sch. Bd. of Sarasota County, 799 So. 2d 322, 323 (Fla. 2d DCA 2001).

The label assigned a statement is not dispositive as to whether it is a finding of fact or conclusion of law. See Kinney v. Dep't of State, 501 So. 2d 129, 131 (Fla. 5th DCA 1987). Conclusions of law labeled as findings of fact, and findings

labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

RULINGS ON CONCLUSIONS OF LAW

Paragraph 17.

The last sentence of Paragraph 17, while labeled a Finding of Fact, is a Conclusion of Law. Paragraph 17, in its entirety, states:

> The Ocala Ranchettes subdivision is in an environmentally sensitive area of wet prairie. The environmental benefits of the Developer's Agreement offset any environmental detriment from the plan Amendments.

After a review of the entire record, the Department rejects the Conclusion of Law, "[t]he environmental benefits of the Developer's Agreement offset any environmental detriment from the plan Amendments," because it is not supported by any findings based on competent substantial evidence. By rejecting the last sentence of paragraph 17, the Department reaches a Conclusion of Law that is as or more reasonable than that of the Administrative Law Judge.

The last sentence of Paragraph 17 is stricken as follows:

> The Ocala Ranchettes subdivision is in an environmentally sensitive area of wet prairie. ~~The environmental benefits of the Developer's Agreement offset any environmental detriment from the plan Amendments.~~

Paragraph 27.

The last sentence of Paragraph 27, while labeled a Finding of Fact, is a Conclusion of Law. Paragraph 27, in its entirety, states:

> The thirteenth primary indicator is a plan or plan amendment that: "Results in the loss of significant amounts of functional open space." To the extent that the Plan Amendments result in a loss of functional open space, the loss is countered by the Developer's Agreement on the Ocala Ranchettes subdivision.

After a review of the entire record, the Department rejects the Conclusion of Law, "[t]o the extent that the Plan Amendments result in a loss of functional open space, the loss is countered by the Developer's Agreement on the Ocala Ranchettes subdivision," because it is not supported by any findings based on competent substantial evidence. By rejecting the last sentence of paragraph 27, the Department reaches a Conclusion of Law that is as or more reasonable than that of the Administrative Law Judge.

The last sentence of Paragraph 27 is stricken as follows:

> The thirteenth primary indicator is a plan or plan amendment that: "Results in the loss of significant amounts of functional open space." ~~To the extent that the Plan Amendments result in a loss of functional open space, the loss is countered by the Developer's Agreement on the Ocala Ranchettes subdivision.~~

ORDER

Upon review and consideration of the entire record of this proceeding, including the Recommended Order, it is hereby ordered as follows:

1. Except as modified herein, the findings of fact and conclusions of law in the Recommended Order are ADOPTED.

2. The Administrative Law Judge's recommendation is ACCEPTED.

3. Plan amendments designated 07-L08 and 07-L39, adopted by the County on November 20, 2007, as remediated, are determined to be "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes.

DONE AND ORDERED this day in Tallahassee, Florida.

William A. Buzzett, Secretary
DEPARTMENT OF COMMUNITY AFFAIRS
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF RIGHTS

EACH PARTY IS HEREBY ADVISED OF ITS RIGHT TO SEEK JUDICIAL REVIEW OF THIS FINAL ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(b)(1)(C) AND 9.110.

TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(a). A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

YOU **WAIVE** YOUR RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH THE AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

MEDIATION UNDER SECTION 120.573, FLA. STAT., IS NOT AVAILABLE WITH RESPECT TO THE ISSUES RESOLVED BY THIS ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed with the undersigned Agency Clerk of the Department of Community Affairs, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 24th day of March, 2011.

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Agency Clerk

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