

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

DEPARTMENT OF COMMUNITY  
AFFAIRS,

Petitioner,

vs.

DOAH Case No. 09-4763GM

POLK COUNTY,

Respondent.

\_\_\_\_\_ /

**FINAL ORDER**

An Administrative Law Judge of the Division of Administrative Hearings has entered an Order Closing File in this Proceeding. A copy of the Order is attached to this Final Order as Exhibit A.

**BACKGROUND**

This is a proceeding to determine whether Polk County's Comprehensive Plan Amendment adopted by Ordinance Number 09-33 on June 17, 2009 ("Amendment") is "in compliance" with the Local Government Comprehensive Planning and Land Development Regulation Act, Ch. 163, Part II, Florida Statutes. The Department reviewed the Amendment and issued a Notice and Statement of Intent to find it not "in compliance." The Department filed a Petition for Formal Administrative Hearing with the Division of Administrative Hearings and Case Number 09-4763 was assigned to this proceeding.

On September 3, 2010, the County adopted Ordinance Number 10-067 which Ordinance repealed in its entirety Ordinance Number 09-33. A copy of Ordinance Number 10-067 is

**Final Order No. DCA10-GM-183**

appended hereto as Exhibit B. By repealing the Ordinance pursuant to which the disputed comprehensive plan amendment was adopted, the County eliminated the compliance issues in this matter.

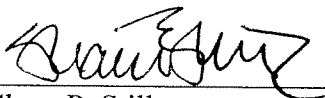
As the comprehensive plan amendment at issue in this proceeding was repealed, the Department suggested that the proceeding had been rendered moot and requested that DOAH relinquish jurisdiction back to the Department for the entry of a Final Order. On September 8, 2010, DOAH closed its file and relinquished jurisdiction back to the Department for further action.

The Amendment at issue in this proceeding has been repealed, rendering the matter entirely moot. *Department of Highway Safety & Motor Vehicles v. Heredia*, 520 So. 2d 61 (Fla. 3d DCA 1988)(appeal regarding driver's license suspension dismissed as moot where suspension was rescinded by the Department).

ORDER

WHEREFORE, it is ORDERED that the above-captioned proceeding is DISMISSED, and the Agency Clerk is directed to close the file.

DONE AND ORDERED in Tallahassee, Florida.

  
\_\_\_\_\_  
Shaw P. Stiller  
General Counsel

**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.

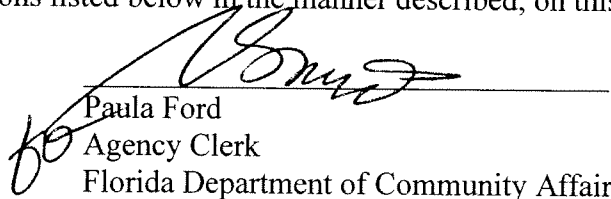
TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED 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 17<sup>th</sup> day of September, 2010.

  
Paula Ford  
Agency Clerk  
Florida Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

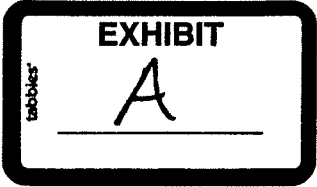
**U.S. MAIL:**

The Honorable J. Lawrence Johnston  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Appalachian Parkway  
Tallahassee, Florida 32399

Michael S. Craig, Esq.  
Ellis E. Watson, Esq.  
Polk County Attorney's Office  
P.O. Box 9005, Drawer AT01  
Bartow, Florida 33831

**HAND DELIVERY:**

L. Mary Thomas, Esq.  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399



STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY )  
AFFAIRS, )  
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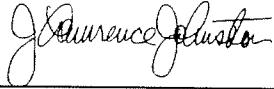
ORDER CLOSING FILE

This cause having come before the undersigned on the Suggestion of Mootness and Request to Relinquish Jurisdiction, filed September 7, 2010, and the undersigned being fully advised in the premises, it is, therefore,

ORDERED that:

1. The final hearing in this cause scheduled for September 21 through 23, 2010, is hereby canceled.
2. The file of the Division of Administrative Hearings in the above-captioned matter is hereby closed and jurisdiction is relinquished to the Department of Community Affairs.

DONE AND ORDERED this 8th day of September, 2010, 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  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

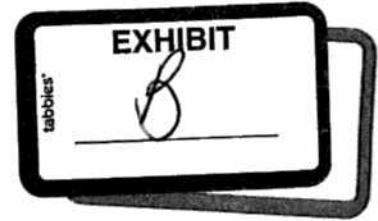
Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of September, 2010.

COPIES FURNISHED:

Michael S. Craig, Esquire  
Polk County Attorney`s Office  
330 West Church Street, Drawer AT01  
Post Office Box 9005  
Bartow, Florida 33831-9005

Ellis E. Watson, Esquire  
Polk County Attorney's Office  
Post Office Box 9005, Drawer AT01  
Bartow, Florida 33831-9005

L. Mary Thomas, Esquire  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100



**ORDINANCE 10-067**

**AN ORDINANCE REPEALING POLK COUNTY ORDINANCE NO. 09-33 AND COMPREHENSIVE PLAN AMENDMENT CPA 09A-08 REGARDING THE SCENIC HIGHWAY RESOURCE PROTECTION OVERLAY DISTRICT; MAKING FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 163.3184, FS, the Board of County Commissioners on February 18, 2009, transmitted proposed revisions to the Polk County Comprehensive Plan (the "Plan") to the Department of Community Affairs (DCA) for written comment, and

**WHEREAS**, DCA, by letter dated May 5, 2009, transmitted objections, recommendations, and comments on the proposed amendments to the Plan; and

**WHEREAS**, the Board of County Commissioners desires to repeal Ordinance 09-33 and Comprehensive Plan Amendment CPA 09A-08 at a public hearing with public notice having been provided.

**NOW THEREFORE, BE IT ORDAINED** by the Polk County Board of County Commissioners:

**SECTION 1: FINDINGS**

The findings set forth above are true and correct and are incorporated into this Ordinance.

**SECTION 2: REPEAL**

Ordinance No. 09-33 and its corresponding proposed Comprehensive Plan Amendment 09A-08 is hereby repealed.

**SECTION 3: SEVERABILITY**

If any portion or Section of this Ordinance is held or declared to be unconstitutional, inoperative or void, such holding or declaration shall not affect the remaining Sections or portions of this Ordinance which shall remain in full force and effect.

**SECTION 4: EFFECTIVE DATE**

This Ordinance shall become effective upon filing with the Secretary of State.

STATE OF FLORIDA     )  
                                  )  
COUNTY OF POLK     )

I Richard M. Weiss, Clerk of the Board of County Commissioners of Polk County, Florida, hereby certify that the foregoing is a true and correct copy of Polk County Ordinance No. 10-067 repealing Polk County Ordinance No. 09-33 and Comprehensive Plan Amendment CPA 09A-08 regarding the Scenic Highway Resource Protection Overlay District. Ordinance No. 10-067 was adopted by said Board on September 1, 2010.

WITNESS my hand and official seal on this 3<sup>rd</sup> day of September 2010.

RICHARD M. WEISS, CLERK

By: *Freda L. Wade*  
Freda L. Wade  
Deputy Clerk

