

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

CLIFTON CURTIS HORTON and  
HORTON ENTERPRISES, INC.,

Petitioners,

v.

DOAH CASE No. 10-5965GM

CITY OF JACKSONVILLE,

Respondent.

\_\_\_\_\_ /

**ORDER DENYING MOTION FOR STAY**

On February 21, 2011, the Department issued Final Order No. DCA11-GM-031, which determined that a certain comprehensive plan amendment adopted by the City of Jacksonville (hereinafter referred to as the “Plan Amendment”) is “in compliance,” as that term is defined by §163.3184(1)(b), *Fla. Stat.* (2010).

Although the Plan Amendment was adopted by the City of Jacksonville on June 22, 2010, the Plan Amendment did not become effective until the Petitioners’ chapter 120 challenge was resolved by issuance of the Department’s Final Order. See, § 163.32465(6)(g), *Fla. Stat.* (2010).

On March 2, 2011, the Petitioners filed a Notice of Appeal of the Final Order, indicating that an appeal had been filed with the First District Court of Appeal.

On February 14, 2011, before the issuance of the Department's Final Order, Petitioners filed a Conditional Motion for Stay of Final Order Pending Judicial Review, requesting that the Secretary issue a stay "of any Final Order finding the challenged Comprehensive Plan Amendment 'in compliance' pending the filing of an appeal." The City of Jacksonville filed a Response to Petitioners' Conditional Motion for Stay of Final Order Pending Judicial Review on February 17, 2011, requesting that the Secretary deny the Motion for Stay. Since the Department has issued a Final Order finding the Plan Amendment in compliance and the Petitioners have filed a Notice of Appeal, the Petitioner's Conditional Motion for Stay is ripe for decision.

The Secretary may issue a stay of a Department final order pending review by a District Court of Appeal. *Fla. R. App. P.* 9.190(e) and 9.310. The Department, as the lower tribunal, has, "continuing jurisdiction, in its discretion, to grant, modify, or deny such relief." MSQ Properties v. Fla. Dept. of Health and Rehabilitative Services, 626 So.2d 292 (Fla. 1st DCA 1993).

Petitioners allege that a stay should be granted because "substantial legal uncertainty would result" if the Plan Amendment becomes effective and is later overturned by appellate proceedings; that there will be many property owners affected; and there are "important policy considerations." However, the Plan Amendment only eliminates an ambiguity contained within the City's

Comprehensive Plan by deleting one sentence in the Future Land Use Element. See, Recommended Order ¶7 and ¶ 8. The Plan Amendment does not change the permitted uses in the relevant land use categories. Recommended Order ¶ 22.

Analogizing from appellate opinions concerning the automatic stay provided to public bodies by *Fla. R. App. P.* 9.310(b)(2), it appears that the Department should defer to the County's planning-level decision embodied in the Plan Amendment. See, St. Lucie County v. North Palm Development Corporation, 444 So.2d 1133 (Fla. 4th DCA 1984), rev. den. sub nom. Toffolon v. St. Lucie County, 453 So.2d 45 (1984); and City of Lauderdale Lakes v. Corn, 415 So.2d 1270 (Fla. 1982). There are no compelling circumstances which justify delaying implementation of the City of Jacksonville's Plan Amendment.

WHEREFORE, the Conditional Motion for Stay of Final Order Pending Judicial Review is DENIED.

DONE AND ORDERED in Tallahassee, Florida.

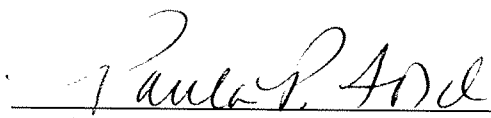
  
William A. Buzzett, Secretary  
DEPARTMENT OF COMMUNITY AFFAIRS

**NOTICE OF RIGHTS**

The parties are hereby notified of their right to seek judicial review of this Order Denying Motion For Stay pursuant to Florida Rule of Appellate Procedure 9.310(f). To initiate review of this order, a Motion for Review must be filed with the First District Court of Appeal.

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 this 22<sup>nd</sup> day of March, 2011.

  
\_\_\_\_\_  
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