

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs.

Case No. 10-7527GM

POLK COUNTY,

Respondent,

and

E.R. JAHNA INDUSTRIES, INC.,

Intervenor.

---

FINAL ORDER OF DISMISSAL

Petitioner Department of Community Affairs commenced this proceeding on August 16, 2010, when it filed a petition with the Division of Administrative Hearings ("Division") pursuant to Section 163.3184(10), Florida Statutes. This petition alleged that the comprehensive plan amendment adopted by Polk County ("County") by Ordinance No. 10-025 on June 2, 2010, was not "in compliance," and requested an administrative hearing regarding this allegation.

On or about March 21, 2011, E.R. Jahna Industries Inc., ("Intervenor") filed a Motion to Intervene. The Motion was granted by Order dated March 25, 2011, which provided

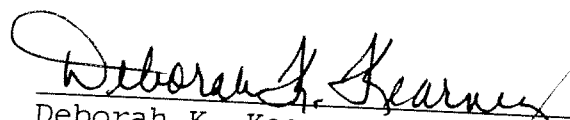
intervention was "subject to proof of standing at final hearing."

On July 14, 2011, the County adopted Ordinance 11-017, which Ordinance repealed in its entirety Ordinance 10-025. A copy of Ordinance 11-017 is appended hereto as Exhibit A. By repealing the Ordinance pursuant to which the disputed comprehensive plan amendment was adopted, the County eliminated the compliance issues in this matter. Intervenors did not file a Petition for Administrative Hearing regarding the rescission, and did not amend their previously filed Motion to Intervene.

On July 20, 2011, the Department filed a Suggestion of Mootness and Request to Relinquish Jurisdiction back to the Department for entry of a Final Order. On July 20, 2011, the Division issued an Order Relinquishing Jurisdiction to the Department and Closing File.

ORDERED that this proceeding be, and hereby is, dismissed and the Agency Clerk is hereby authorized and directed to close the file in this proceeding.

DONE AND ORDERED in Tallahassee, Florida.

  
Deborah K. Kearney, General Counsel  
DEPARTMENT OF COMMUNITY AFFAIRS

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.

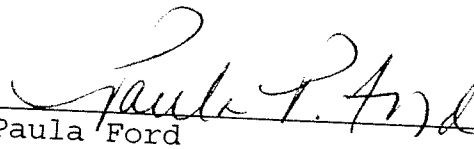
TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED 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 by the manner indicated to each of the persons listed below on this 2<sup>nd</sup> day of August, 2011.

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

**By U.S. Mail**

The Honorable D. R. Alexander  
Administrative Law Judge  
Division of Administrative Hearings  
The Desoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

**By Electronic Mail**

Janet A. McDonald, Esquire  
Polk County Attorney's Office  
Post Office Box 9005, Drawer  
AT01  
Bartow, Florida 33831-9005  
**JanetMcDonald@polk-county.net**

C.B. Myers, III, Esquire  
C.B. Myers, P.A.  
202 East Stuart Avenue  
Lake Wales, Florida 33859-1410  
**dapartlo@aol.com**

Richard E. Shine, Esquire  
Assistant General Counsel  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
**Richard.Shine@dca.state.fl.us**

**ORDINANCE NO. 11- 017**

**AN ORDINANCE REPEALING POLK COUNTY ORDINANCE NO. 10-025 AND COMPREHENSIVE PLAN AMENDMENT CPA 10A-08 REGARDING THE E.R. JAHNA RANCH SAND MINE; MAKING FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 163.3184, F.S., the Board of County Commissioners on August 5, 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 7, 2010, transmitted objections, recommendations, and comments on the proposed amendments to the Plan; and

**WHEREAS**, the Board of County Commissioners conducted a Public Hearing on June 2, 2010, with due public notice having been provided, on the proposed plan revisions; and

**WHEREAS**, on June 2, 2010, the Board adopted Ordinance 10-025 and CPA 10A-08; and

**WHEREAS**, the Board of County Commissioners desires to repeal Ordinance 10-025 and Comprehensive Plan Amendment CPA 10A-08 at a public hearing with due 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**

Polk County Ordinance No. 10-025 and Polk County Comprehensive Plan Amendment 10A-08 are 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 Ordinance No. 11-017 adopted by the Board on July 12, 2011

WITNESS my hand and official seal of said Board this 14<sup>th</sup> day of

July 2011.

Richard M. Weiss  
Clerk to the Board

By Kathryn Courtney  
Kathryn Courtney  
Deputy Clerk

