

STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY

THE CENACLE CONVENT OF  
PALM BEACH COUNTY, INC.,

Petitioner,

v.

Case No. 10-10373GM

TOWN OF LANTANA,

Respondent,

and

PATRICK F. SMITH and  
MARK O'DONNELL,

Intervenors.

---

**RESCISSION OF FINAL ORDER**

The Final Order in this case was entered by the Department of Community Affairs on August 25, 2011. On September 12, 2011, the Department received a letter from the Town of Lantana which is in the nature of a motion to rescind the Final Order. A copy of the letter is attached as Exhibit A. The attorneys for the Petitioner confirmed the facts stated in the letter, and joined in the request for rescission.

As stated in the letter, this proceeding was settled when the Town rescinded the small-scale plan amendment at issue. Therefore, the Department's Final Order should not have found the small scale amendment in compliance, and the Final Order should not have been issued.

Effective October 1, 2011, the state land planning agency duties, powers and functions of the Department of Community Affairs were transferred to the Department of Economic Opportunity.

**ORDER**

WHEREFORE, it is ORDERED that the Final Order of August 25, 2011 is rescinded.

DONE AND ORDERED in Tallahassee, Florida.



---

Doug Darling, Executive Director  
DEPARTMENT OF ECONOMIC OPPORTUNITY

**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.

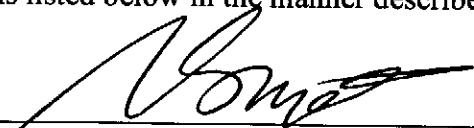
TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, OFFICE OF THE GENERAL COUNSEL - CALDWELL BUILDING, 107 EAST MADISON STREET, MSC 110, TALLAHASSEE, FLORIDA 32399-4128, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE 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 Economic Opportunity, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 10<sup>th</sup> day of October 2011.

  
\_\_\_\_\_  
Miriam Snipes, Agency Clerk  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
107 East Madison Street, MSC 110  
Tallahassee, Florida 32399-4128

By U.S. Mail:

Alfred J. Malefatto, Esquire  
Greenberg Traurig, P.A.  
777 South Flagler Drive, Suite 300E  
West Palm Beach, Florida 33401

R. Max Lohman, Esquire  
Corbett and White, P.A.  
1111 Hypoluxo Road, Suite 207  
Lantana, Florida 33462

Brian Joslyn, Esquire  
Boose, Casey, Cikin, Lubitz, Martens, McBane & O'Connell  
Northbridge Center, 19th Floor  
515 North Flagler Drive  
West Palm Beach, Florida 33401-4626

**By Hand Delivery:**

David L. Jordan, Assistant General Counsel  
Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Tallahassee, Florida 32399-4128

**By Filing with DOAH:**

The Honorable D. R. Alexander  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550

*Corbett and White, P.A.*

ATTORNEYS AT LAW  
1111 Hypoluxo Road, Suite 207

*Lantana, Florida 33462*

JOHN CORBETT  
TRELA J. WHITE  
BRADLEY W. BIGGS\*\*  
KEITH W. DAVIS\*  
R. MAX LOHMAN  
ABIGAIL FORRESTER JORANDBY  
JENNIFER GARDNER ASHTON

TELEPHONE (561) 586-7116  
TELECOPIER (561) 586-9611

\* Board Certified in City, County and Local Government Law  
^ State Certified County and Circuit Court Mediator

September 7, 2011

Via U.S. Mail

RECEIVED

SEP 12 2011

Office of SECRETARY  
DEPARTMENT of COMMUNITY AFFAIRS

William A. Buzzett  
Secretary  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

Re: Final Order Entered In Case No. 10-10373 (The Cenacle Convent of Palm Beach County, Inc. Petitioner v. Town of Lantana, Respondent; Patrick F. Smith and Mark O'Donnell, Intervenors).

Dear Mr. Buzzett:

I represent the Town of Lantana, Florida (the "Town"). I am in receipt of the Department of Community Affairs' (the "Department") Final Order dated August 25, 2011 regarding the above-mentioned case. A copy of the Final Order is attached to this letter for your review. The Final Order provides that the Town's Ordinance No. O-13-2010 is "in compliance" with Chapter 163, Florida Statutes. The Final Order appears to have been entered in error given that the Town Council reconsidered Ordinance No. O-13-2010 and subsequently denied its adoption before it became effective pursuant to Section 163.3187(3)(a), Florida Statutes. Once the Ordinance was denied adoption, it no longer needed to be reviewed by the Department. The Department was notified of the Town Council's decision in this regard through the Cenacle Convent of Palm Beach County, Inc.'s ("Cenacle") Motion to Voluntarily Dismiss its DOAH case with prejudice. The Department was served with a copy of this Motion. The Motion discusses the Town Council's decision to deny adoption of the Ordinance, which made Cenacle's challenge moot. I have attached copies of both the Motion and the Administrative Law Judge's April 15, 2011 Order Closing File to this letter for your review.

To provide you with more specific details regarding the Town Council's actions, please note that on October 28, 2010, the Town Council passed Ordinance No. O-13-2010 amending the Town's Comprehensive Plan to change the Cenacle Property's (the "Property") future land use designation from Commercial Low Density (C-1) to Residential Medium (R-3).

September 7, 2011

Page 2

On November 23, 2010, Cenacle filed a Petition for Formal Administrative Hearing challenging the compliance of the Town's Comprehensive Plan Amendment, as adopted by Ordinance No. O-13-2010, on the basis that the Amendment was not in compliance with applicable law. The Cenacle's filing of the Petition prevented Ordinance No. O-13-2010 from becoming effective during the pendency of the DOAH proceeding.

During the March 28, 2011 Town Council meeting, the Town Council voted to reconsider Ordinance No. O-13-2010 at its next regularly scheduled council meeting. The Town provided proper public notice that Ordinance No. O-13-2010 would be reconsidered during its next regularly scheduled Town Council meeting of April 11, 2011.

During the April 11, 2011 Town Council meeting, the Town Council held a public hearing during which public comment was heard from members of the public wishing to speak. After closing the public portion of the hearing and following Town Council discussion, a motion to deny Ordinance No. O-13-2010 was made and seconded. The Town Council subsequently voted on the motion to deny Ordinance No. O-13-2010, the motion passed and the Ordinance was rejected. See Ordinance O-13-2010, a copy of which is attached to Cenacle's Motion for Voluntary Dismissal. The "nay" votes indicated on the Ordinance represent the votes in favor of the motion to deny.

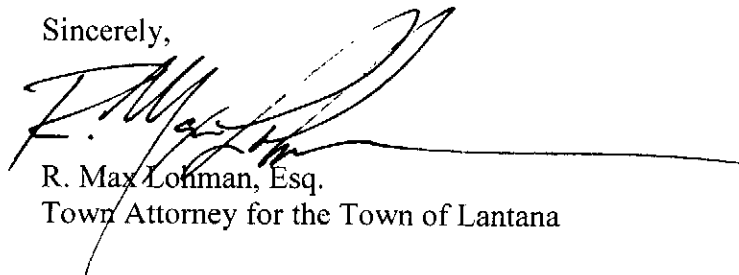
Once Ordinance No. O-13-2010 failed to pass, three things occurred. First, the previous land use designation of C1-Commercial Low Density, which had been assigned to the subject property through the adoption of Ordinance No. O-02-2009 on April 27, 2009, remained intact and continues to be in effect and applicable to the Property. Second, the basis for Cenacle's DOAH Petition became moot. As a result, Cenacle moved to voluntarily dismiss the case and the Administrative Law Judge closed the file. Third, there was no need for your agency to conduct a review of Ordinance No. O-13-2010 or issue a Final Order.

For these reasons, the Town respectfully requests that your agency rescind the Final Order issued on August 25, 2011.

On a final note, during my review of this case file I discovered that the Town never received a copy of the Final Order acknowledging the compliance of Ordinance No. O-02-2009, which was adopted by the Town Council on April 27, 2009. If a Final Order has been entered, please forward me a copy at your earliest convenience.

Please contact me with any questions or concerns regarding the above and thank you for your assistance in this matter.

Sincerely,



R. Max Lohman, Esq.  
Town Attorney for the Town of Lantana

September 7, 2011

Page 3

cc: Alfred J. Malefatto, Esq., Attorney for Petitioner  
Brian Joslyn, Esq., Attorney for Intervenors  
Michael Bornstein, Town Manager for the Town of Lantana  
David Thatcher, Development Services Director for the Town of Lantana

Y:\docs\Lantana\Letters & Memos\ltr-william buzzett department community affairs re final order cenacle.doc