STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

ROBERT KEMP, SYLVIA KEMP, and
GREGORY SAMMS,

Petitioners,

v. DOAH Case No. 13-0009GM

MIAMI-DADE COUNTY,

Respondent,

and

ROSAL WESTVIEW, LLC,

Intervenor.

FINAL ORDER

This matter was considered by the Executive Director of the Department of Economic Opportunity ("Department") following receipt of a Recommended Order issued by an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

Background

This is a proceeding to determine whether an amendment to the Land Use Plan Map of the Miami-Dade County Comprehensive Development Master Plan adopted by Ordinance No. 12-109 on December 4, 2012 (the "Plan Amendment"), is "in compliance" as that term is defined in section 163.3184(1)(b), Fla. Stat.[1] The Plan Amendment changes the Land Use Plan Map designation on approximately 148 acres from Parks and Recreation to Industrial and Office (101 acres) and Business and Office (47 acres) for development of a proposed business park.

[1] References to the Florida Statutes are to the 2013 version of the statutes.

Role of the Department

The Plan Amendments were adopted under the expedited state review process in section 163.3184(3), Fla. Stat., and were challenged by Robert Kemp, Sylvia Kemp, and Gregory Samms ("Petitioners") in a petition timely filed with DOAH. The Department was not a party to the proceeding. Because the ALJ's Recommended Order recommends that the Plan Amendment be found in compliance, the ALJ submitted the Recommended Order to the Department pursuant to section 163.3184(5)(e), Fla. Stat. The Executive Director of the Department must either determine that the Plan Amendment is in compliance and enter a Final Order to that effect, or determine that the Plan Amendment is not in compliance and submit the Recommended Order to the Administration Commission for final agency action.

Standard of Review of Recommended Order

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

The agency may not reject or modify the findings of fact in a recommended order unless the agency first determines from a review of the entire record, and states with particularity in its 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. §120.57(1)(*l*), Fla. Stat. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. Id.

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. Department of Health, 823 So. 2d 823, 825 (Fla. 1st DCA 2002) (citations omitted). In determining whether challenged findings of fact are supported by the record in accord with this standard, the agency 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. Department of Business Regulation, 475 So. 2d 1277, 1281-1283 (Fla. 1st DCA 1985). If the evidence presented in an administrative hearing supports two inconsistent findings, it is the ALJ's role to decide the issue one way or the other. Heifetz at 1281.

The Administrative Procedure Act also specifies the manner in which the agency 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 an administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of an administrative rule and must make a finding that its substituted conclusion of law or interpretation of an administrative rule is as reasonable or more reasonable than that which was rejected or modified. §120.57(1)(l), Fla. Stat. See also, DeWitt v. School Board of Sarasota County, 799 So. 2d 322 (Fla. 2nd DCA 2001).

The label assigned to a statement is not dispositive as to whether it is a finding of fact or a conclusion of law. Kinney v. Department of State, 501 So. 2d 1277 (Fla. 5th DCA 1987), and Goin v. Commission on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995). Conclusions of law labeled as findings of fact, and findings of fact labeled as conclusions of law, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

Department's Review of the Recommended Order

The Recommended Order was issued on August 1, 2013. No party filed exceptions and, accordingly, no party demonstrated that the underlying administrative proceeding departed from essential requirements of law or that the findings of fact in the Recommended Order are not supported by competent, substantial evidence presented at the final hearing. Therefore, the Department accepts the findings of fact in the Recommended Order.

The Department has reviewed the ALJ's conclusions of law in light of the Department's substantive jurisdiction over land-use planning matters under Chapter 163, Part II, Fla. Stat. The Department has not identified a conclusion of law within its substantive jurisdiction for which a substituted conclusion of law would be as reasonable as, or more reasonable than, the ALJ's conclusions of law. §120.57(1)(*l*), Fla. Stat. Therefore, the Department accepts the ALJ's conclusions of law.

ORDER

Based on the foregoing, the Department adopts the Recommended Order, a copy of which is attached as Exhibit A, as the Department's final order and finds that the Plan Amendment adopted by Miami-Dade County on December 4, 2012, is in compliance as defined in section 163.3184(1)(b), Fla. Stat.

JESSE PANUCCIO, Executive Director
Department of Economic Opportunity

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH 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 FINAL AGENCY ACTION, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 107 EAST MADISON STREET, CALDWELL BUILDING, MSC 110, TALLAHASSEE, FLORIDA 32399-4128, WITHIN THIRTY CALENDAR (30) DAYS AFTER THE DATE THIS FINAL AGENCY ACTION IS FILED WITH THE AGENCY CLERK, AS INDICATED BELOW. A DOCUMENT IS FILED WHEN IT IS RECEIVED BY 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 ALSO BE FILED WITH THE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

AN ADVERSELY AFFECTED PARTY WAIVES THE RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH BOTH THE DEPARTMENT'S AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

NOTICE OF FILING AND SERVICE

I HEREBY CERTIFY that the above Final Order was filed with the Department's undersigned designated Agency Clerk and that true and correct copies were furnished to the persons listed below in the manner described on the 19 day of September, 2013.

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