

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

JOHN R. WHITT AND KIMBERLY WHITT,

Petitioners,

vs.

Case No. 14-4847

BAYHEAD LANDINGS PROPERTY OWNERS
ASSOCIATION, INC.,

Respondent.
_____ /

DANIEL J. DICIOLLA, AUDIE G. CHILDERS,
LYNN ELROD CHILDERS, ROBERT MCCASKILL,
AND SARAH MCCASKILL,

Petitioners,

vs.

Case No. 14-4848

BAYHEAD LANDINGS PROPERTY OWNERS
ASSOCIATION, INC.,

Respondent.
_____ /

FINAL ORDER

This matter was considered by the Director for the Division of Community Development, within the Department of Economic Opportunity ("Department"), following receipt of the Recommended Order. The Department, pursuant to section 120.569(2)(1), Florida Statutes, now issues its Final Order.

BACKGROUND

This is a proceeding to determine whether Respondent homeowners' association properly revived its expired declaration of covenants and other governing documents in accordance with sections 720.403-720.407, Florida Statutes. This matter was referred to the Division of Administrative Hearings (DOAH) on October 14, 2014, for assignment of an administrative law judge and a formal hearing. An administrative hearing was held on January 14, 2015, before the assigned duly appointed administrative law judge ("ALJ"), Robert S. Cohen. On April 1, 2015, the ALJ submitted his Recommended Order to the Department. Neither party filed exceptions to the Recommended Order. The Department has been provided copies of the parties' pleadings, the documentary evidence introduced at the final hearing, and a one-volume transcript of the hearing.

ROLE OF THE DEPARTMENT

On or about August 21, 2014, the Department issued a determination approving the revitalization of the proposed revived declaration of covenants submitted by Respondent Bayhead Landings Property Owners Association, Inc. ("Association") as being in compliance with sections 720.403-720.407, Florida Statutes. The revitalization was timely challenged by Petitioners, John R. Whitt, Kimberly Whitt, Daniel J. DiCiolla, Audie G. Childers, Lynn Elrod Childers, Robert McCaskill and Sarah McCaskill in a petition timely filed with DOAH. The Department was not a party to the proceeding. The Recommended Order recommends that the revitalization be affirmed. Accordingly, the Department must either determine that the revitalization is in compliance with sections 720.403-720.407, Florida Statutes, and enter a Final Order to that effect, or determine that the revitalization was not in compliance and submit a final order rejecting or modifying such conclusion of law.

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 final 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. Dept. of State, 501 So. 2d 129 (Fla. 5th DCA 1987), and Goin v. Comm. 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.

FINDINGS OF FACT

After a review of the record in its entirety, the Department cannot conclude that any of the Findings of Fact of the Recommended Order are not based on competent, substantial evidence in the record or that the proceedings on which the findings were based did not comply with essential requirements of law, which are the only statutory grounds on which an agency may reject findings of fact. See § 120.57(1)(l), Fla. Stat. Accordingly, the Department adopts and incorporates in this Final Order the Findings of Fact set forth in paragraphs 1 through 32 in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

The Department has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapters 120 and 720, Florida Statutes. The Department has reviewed

the Conclusions of Law set forth in paragraphs 32 through 46 of the Recommended Order and has not identified a conclusion of law within its jurisdiction for which a substituted conclusion of law would be as reasonable as, or more reasonable than, the ALJ's Conclusions of Law. See § 120.57(1)(l). Therefore, the Department accepts the ALJ's Conclusions of Law.

ORDER

Based on the foregoing, the Department adopts the findings and conclusions in the Recommended Order, a copy of which is attached as Exhibit A, as the Department's final order. It is therefore ORDERED that the revitalization of the declarations of covenants and other governing documents is affirmed as being in compliance with sections 720.403-720.407, Florida Statutes.



William B. Killingsworth, Director
Division of Community Development
Department of Economic Opportunity

NOTICE OF RIGHT TO APPEAL

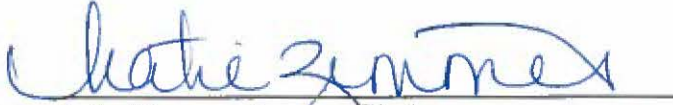
THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(1)(c) AND 9.110.

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 4th day of June 2015.



Katie Zimmer, Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

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The Honorable Robert S. Cohen
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