

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

TANIA GARCIA, PEDRO ROMERO, and  
MIGUEL A. GONZALEZ,

Petitioners,

vs.

Case No. 15-3834GM

CITY OF HIALEAH,

Respondent,

and

HIALEAH 10.1 ACRES, LLC, and  
CHALET INVESTMENTS, LLC,

Intervenors.

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**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 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 a small-scale amendment to the Future Land Use Map of the City of Hialeah Comprehensive Plan, adopted by Ordinance No. 2015-34 on June 9, 2015 (the “FLUM Amendment”), is in compliance as defined in section 163.3184(1)(b), Florida Statutes.<sup>1</sup> The FLUM Amendment changed the Future Land Use Map designation on a 9.99-acre

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<sup>1</sup> References to the Florida Statutes are to the 2014 version of the statutes.

parcel from Low-Density Residential, which allows construction of up to 120 single-family dwelling units, to Medium-Density Residential, allowing up to 240 multi-family dwelling units.

**Role of the Department**

The FLUM Amendment was adopted under the small-scale comprehensive plan amendment process pursuant to section 163.3187, Florida Statutes, and was challenged by Edward Ruben Anderson (“Petitioner”) in a petition timely filed with DOAH. The Department was not a party to the proceeding. The ALJ’s Recommended Order recommends that the FLUM Amendment be found in compliance, and the ALJ therefore submitted the Recommended Order to the Department pursuant to section 163.3187(5)(b), Florida Statutes. The Department must either determine that the FLUM Amendment is in compliance and enter a Final Order to that effect, or determine that the FLUM Amendment is not in compliance and submit the Recommended Order to the Administration Commission for final agency action.

**Standard of Review of Recommended Order**

Pursuant to the Administrative Procedure Act, an 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), Florida Statutes. 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. Dep’t 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. Dep't 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. When rejecting or modifying a conclusion of law, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. §120.57(1)(l), Florida Statutes. 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. Dep't. of State*, 501 So. 2d 129 (Fla. 5th DCA 1987); *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.

#### **Department's Review of the Recommended Order**

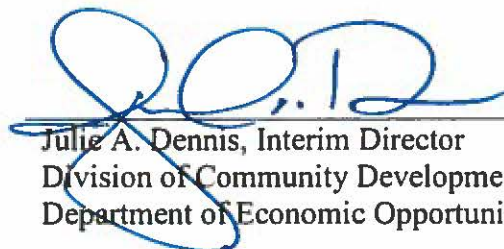
The Department has been provided copies of the parties' pleadings, the documentary evidence introduced at the final hearing, and a three-volume transcript of the proceedings. Neither party filed exceptions to the ALJ's Recommended Order.

The Department concludes that each of the ALJ's findings of fact are based on competent substantial evidence in the record and that the proceedings on which the findings were based complied with essential requirements of law. §120.57(1)(l), Florida Statutes. In the Recommended Order, the ALJ describes the competent substantial evidence presented at the final hearing that supports the Plan Amendment. Accordingly, 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, Florida Statutes. 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), Florida Statutes. 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 City of Hialeah Comprehensive Plan Amendment adopted by Ordinance No. 2015-34 on June 9, 2015, is in compliance as defined in section 163.3184(1)(b), Florida Statutes.

  
Julie A. Dennis, Interim 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 16<sup>th</sup> day of December 2015.



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

**By US MAIL**

The Honorable Suzanne Van Wyk Administrative Law Judge Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, FL 32399-6847	Michael Anthony Rodriguez, Esquire Harrington Law Associates, P.L.L.C. 100 South Olive Avenue West Palm Beach, Florida 33401
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