STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOWN OF JENNINGS,

Petitioner,

vs. Case No. 16-6135RU

DEPARTMENT OF ECONOMIC OPPORTUNITY,

Respondent.
_______________________________/

SUMMARY FINAL ORDER

This cause is before the undersigned on the Department of Economic Opportunity's (Department's) Motion for Summary Final Order (Motion) filed on November 10, 2016. The Town of Jennings (Town) filed a response on November 17, 2016. Pending a ruling on the Motion, the final hearing on November 18, 2016, was continued to December 22, 2016.

Section 120.57(1)(h), Florida Statutes, governs the disposition of the Motion and provides in relevant part as follows:

> Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order.

The record submitted by the parties consists of the pleadings (including the Department's rejection letter dated

June 3, 2016), an affidavit by the Town Manager, and one exhibit (the second public hearing notice) attached to the affidavit.

By way of background, the undisputed facts are as follows. By letter dated June 3, 2016, the Department denied the Town's application for a housing rehabilitation block grant on the following ground:

> The Town's second public hearing notice did not state where and when a copy of the draft application would be available for citizen review, except at the public hearing. The requirement for making the draft application available for review was clarified in the rule revision that was adopted prior to the start of the FFY 2015 application cycle.

The letter then identified in bold font the notice requirement found in Florida Administrative Code Rule 73C-23.0041(5)(c)2.a., which provides in relevant part that the second public notice hearing "shall also state where and when, other than at the public hearing, a copy of the draft application shall be available for citizen review and how citizens can submit written comments on the draft application." The rule goes on to warn an applicant that a "[f]ailure to include all of the required information in the public hearing notice shall result in the application being rejected as provided in Section 290.0475(6), F.S."

The letter also informed the Town that the recent rule revision regarding notice "was made to ensure that Small Cities CDBG applicants were complying with the federal requirement found in 24 Code of Federal Regulation 570.431(c)." The letter then recited subsection (c) of the regulation, which reads as follows:

> (c) Publication of proposed application.
>
> (1) The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:
>
> (i) Examine the application's contents to determine the degree to which they may be affected:

(ii) Submit comments on the proposed application; and

(iii) Submit comments on the performance of the applicant.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed application in one or more newspapers of general circulation, and by making copies of the proposed application available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed application, and must include a list of the locations where copies of the entire proposed application may be examined.

On October 18, 2016, the Town filed a Rule Challenge alleging that in denying the application, the Department relied on criteria found in the federal regulation, rather than the rule, and the federal criteria have not been adopted as a rule pursuant to section 120.54(1)(a).

The letter is clear and unambiguous. A reading of the plain language makes clear that in rejecting the Town's application, the Department relied solely on the requirements for the second public hearing notice found in rule 73C-23.0041(5)(c)2.a. Notably, the letter states unequivocally that the requirement for making the draft application available for public review was clarified in a recent rule revision; it included the entire text of the rule; and it emphasized in bold font the rule's specific requirement that the Town failed to satisfy.

The reference in the letter to the federal regulation was intended to provide background for the recent revisions made to the rule. More importantly, the letter never states that the application was denied for failing to comply with the requirements of the regulation.

To grant the Motion, the facts must be so crystallized that nothing remains but questions of law. Spears v. Albertson's, Inc., 848 So. 2d 1176, 1177-1178 (Fla. 1st DCA 2003). In its response, the Town argues that a factual dispute still exists on

the issue of whether the Department relied on its rule or the regulation. As the Town was clearly informed in the letter, however, its "second public hearing notice did not state where and when a copy of the draft application would be available for citizen review, except at the public hearing." This statement tracks almost verbatim the language in the rule.[1/]

The record submitted by the parties demonstrates that there is no genuine issue as to any material fact and, as a matter of law, the Department is entitled to the entry of a final order.[2/] This being so, the Motion is granted, and the final hearing on December 22, 2016, is canceled. Based on the foregoing, it is,

ORDERED that the federal regulation cited in the letter dated June 3, 2016, is not an unlawful unadopted rule.

DONE AND ORDERED this 22nd day of November, 2016, in Tallahassee, Leon County, Florida.

D. R. Alexander

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of November, 2016.

ENDNOTES

[1/] The letter points out that every application submitted by a small city during the application cycle was denied for the same reason and a new application cycle would be opened in July 2016.

[2/] The Town also argues that the affidavit and exhibit demonstrate, conclusively, that its notice complied with the rule. However, the merits of the application are not at issue.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.