

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

RONALD "CHIP" ROSS,

Petitioner,

v.

DOAH CASE NO. 17-3286GM

DEO CASE NO. 18-025

CITY OF FERNANDINA BEACH,
FLORIDA,

Respondent.

FILED
2018 JAN 31 PM 1:45
DIVISION OF
ADMINISTRATIVE HEARINGS

FINAL ORDER

This matter was considered by the Director for the Division of Community Development, within the Florida 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") on November 9, 2017.

Background

This is a proceeding to determine whether small-scale amendments to the City of Fernandina Beach's Future Land Use Map ("FLUM"), adopted by Ordinances No. 2017-13 and 2017-15 on June 6, 2017 (the "FLUM Amendments"), are "in compliance" as defined in section 163.3184(1)(b), Florida Statutes.¹ The FLUM Amendments changed the FLUM category of seven parcels totaling approximately 0.91 acres from Industrial ("IND") to Central Business District ("CBD").

¹ Except as otherwise provided, all references to the Florida Statutes are to the 2016 version of the statutes, which was in effect at the time the FLUM Amendments were adopted.

Role of the Department

The FLUM Amendments were adopted under the small-scale comprehensive plan amendment process pursuant to section 163.3187, Florida Statutes, and were challenged by Ronald “Chip” Ross (“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 Department enter a final order determining that the FLUM Amendments be found “in compliance,” as defined in section 163.3184(1)(b), Florida Statutes. Accordingly, the ALJ submitted the Recommended Order to the Department pursuant to section 163.3187(5), Florida Statutes. 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

Pursuant to the Administrative Procedure Act, the Department may not reject or modify the findings of fact in a recommended order unless the Department 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. (2017). 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 Department may not reweigh the evidence or judge the credibility of witnesses as these fall within the sole purview of the ALJ as the finder of fact. *See Heifetz v. Dep't of Bus. Reg.*, 475 So.2d 1277, 1281-83 (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. *Id.* at 1281.

The Administrative Procedure Act also specifies the manner in which the Department is to address conclusions of law in a recommended order. The Department in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction. § 120.57(1)(l), Fla. Stat. (2017). 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. *Id.*; *see also DeWitt v. School Board of Sarasota Cty.*, 799 So.2d 322 (Fla. 2d 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, are 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 one-volume transcript of the proceedings. Neither party filed exceptions to the ALJ's Recommended Order.

The Department cannot conclude that any of the ALJ's findings of fact 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. In the Recommended Order, the ALJ describes the competent substantial evidence presented at the final hearing that supports the FLUM Amendments. Accordingly, the Department accepts the findings of fact in the Recommended Order.

The Department has reviewed the ALJ's conclusions of law considering 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. 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 FLUM Amendments adopted by the City of Fernandina Beach, Florida, through Ordinances 2017-13 and 2017-15 on June 6, 2017, are "in compliance," as defined in section 163.3184(1)(b), Florida Statutes.

DONE AND ORDERED this 29th day of January, 2018, in Tallahassee, Leon County, Florida.



Julie A. Dennis, Director
Division of Community Development
Department of Economic Opportunity

NOTICE OF RIGHT TO APPEAL

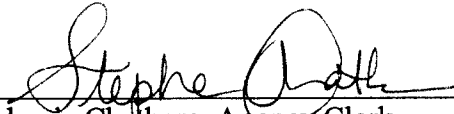
THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(1)(c) AND 9.110.

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, AGENCY.CLERK@DEO.MYFLORIDA.COM, 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 30th day of January, 2018.



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

By CERTIFIED US MAIL

The Honorable Suzanne Van Wyk Administrative Law Judge Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399-6847	Ronald "Chip" Ross 210 North 3rd Street Fernandina Beach, Florida 32034
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