

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

WP STATION TOWER, LLC; WINTERPARK
STATION, LLC, WINTERGATE, LLC; AND
PALMETTO BUILDING 2019, LLC

Petitioners,

vs.

CITY OF WINTER PARK, FLORIDA,

Respondent.

DOAH CASE NO.: 22-0073GM
DEO CASE NO.: 22-069

_____ /

FINAL ORDER

The Division of Community Development within the Florida Department of Economic Opportunity (“Department”) considered this matter following the receipt of a recommended order (“Recommended Order”). The Administrative Law Judge (“ALJ”) assigned to this matter by the Division of Administrative Hearings (“DOAH”) issued the Recommended Order on June 23, 2022.

Background

This is a proceeding to determine whether the City of Winter Park (“City”) Comprehensive Plan Amendment adopted by Ordinance 3227-21 (“Plan Amendment”), on December 8, 2021, is “in compliance,” as defined by section 163.3184(1)(b), Florida Statutes.¹ The Plan Amendment amends the City’s Comprehensive Plan to create the Orange Avenue Overlay District and set forth goals, objectives, and policies to govern the development of properties within the newly created district.

On January 7, 2022, WP Station Tower, LLC, Winter Park Station, LLC, Wintergate, LLC,

¹ References to the *Florida Statutes* are to the 2021 version, unless otherwise stated.

and Palmetto Building 2019, LLC (“Petitioners”), filed a petition for an administrative hearing challenging whether the Plan Amendment is “in compliance,” as defined by section 163.3184(1)(b), Florida Statutes. On February 15, 2022, Respondent filed a Motion for Summary Recommended Order, which was granted in part on March 9, 2022. On the same date, the ALJ also granted Petitioners leave to file an amended petition, which was filed on March 18, 2022.

Petitioners allege that the Plan Amendment: (1) is not internally consistent with the City’s Comprehensive Plan; (2) does not guide future decisions in a consistent manner or establish meaningful and predictable standards for use and development of land or meaningful guidelines for the content of more detailed land development and use regulations as required by section 163.3177(1), Florida Statutes; and (3) is not based upon sufficient relevant and appropriate data and analysis as required by section 163.3177(1)(f), Florida Statutes.

A final hearing on the matter was held as scheduled on April 6, 2022, before the duly designated ALJ. The ALJ issued the Recommended Order on June 23, 2022, recommending the Department issue a final order determining that the Plan Amendment is in compliance. No exceptions to the Recommended Order were filed with the Department.

Role of the Department

Petitioners filed their challenge pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes. The ALJ held a hearing and issued the Recommended Order, recommending that the Department determine that the Plan Amendment is in compliance. The Department may determine 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 refer the Recommended Order and the Department’s determination to the Administration Commission for final agency action. § 163.3184(5)(e), Fla. Stat.

The Department received a record consisting of the documentary evidence introduced at the final hearing and a single-volume transcript of the proceedings of the final hearing. The Department reviewed the record and issues this Final Order in accordance with sections 120.57(1)(k)-(l) and 163.3184(5)(e), Florida Statutes.

If the Department rejects or modifies a conclusion of law or interpretation of an administrative rule, then the Department must state with particularity its reasons for such rejection or modification. § 120.57(1)(l), Fla. Stat. If the Department rejects or modifies a finding of fact, then the Department must state with particularity that the finding was not based on competent substantial evidence or that the proceedings on which the finding was based did not comply with essential requirements of law. *Id.*

Pursuant to section 120.57(1)(k), Florida Statutes, the Department must issue an explicit ruling on each exception. The Department is not required to rule on an exception that does not clearly identify the disputed portion of the Recommended Order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. § 120.57(1)(k), Fla. Stat.

Standard of Review

Findings of Fact

Section 120.57(1)(l), Florida Statutes, prescribes that in its issuance of a final order, the Department may not reject or modify the findings of fact of the ALJ “unless the agency first determines from a review of the entire record, and states with particularity in the 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.” Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs,*

Inc., Great Am. Div. v. Unemployment. App. Comm'n, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996). Evidence is substantial if there is “some (more than a mere iota or scintilla) real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, ‘tending to prove’) as to each essential element” of the claim. *Id.* The Department is “not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Heifetz v. Dep't of Bus. Reg., Div. of Alcoholic Bev. & Tob.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). “If the ALJ's findings of fact are supported by competent, substantial evidence, the agency cannot reject them even to make alternate findings that are also supported by competent, substantial evidence.” *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013). The Department may reject findings of fact if the proceedings on which the findings were based did not comply with the essential requirements of law. *See* § 120.57(1)(l), Fla. Stat.; *Dept. of Corrections v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). In this context, Florida’s First District Court of Appeal has characterized a failure “to comply with the essential requirements of the law” as “a procedural irregularity.” *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 102 (Fla. 1st DCA 2008) (ruling that the agency erred by concluding that the ALJ had failed to comply with the essential requirements of the law “[b]ecause there has been no suggestion of a procedural irregularity”).

Conclusions of Law

Section 120.57(1)(l), Florida Statutes, authorizes the Department to reject or modify a conclusion of law over which the agency has substantive jurisdiction. § 120.57(1)(l), Fla. Stat.; *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1010 (Fla. 1st DCA 2001). If the Department rejects or modifies any of the ALJ’s conclusions of law, then the Department must state with particularity

its reasons for rejecting or modifying the conclusion 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), Fla. Stat. The Department may not reject or modify a finding that is substantially one of fact simply by treating the finding as a legal conclusion. *See Abrams v. Seminole Cnty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Additionally, a rejection or modification of a conclusion of law may not form a basis for rejection or modification of a finding of fact. § 120.57(1)(l), Fla. Stat.

Adoption of the Recommended Order


The Department has reviewed the Recommended Order and concludes that all findings of fact therein were based on competent substantial evidence in the record. The Department finds that the proceedings on which the findings of fact were based complied with the essential requirements of law.

The Department has reviewed the ALJ's conclusions of law and finds that all conclusions of law within the Department's substantive jurisdiction are reasonable. The Department does not have any substitute conclusions of law that would be as or more reasonable than the ALJ's conclusions of law.

ORDER

Based on the foregoing, the Department determines that the Plan Amendment is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. The Department adopts and incorporates the Recommended Order in its entirety into the Department's Final Order.

Dated this 10th day of August, 2022.


Benjamin Melnick, Deputy Secretary
Division of Community Development
Florida Department of Economic Opportunity

NOTICE OF RIGHT TO JUDICIAL REVIEW

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 JUDICIAL REVIEW 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 (30) CALENDAR DAYS AFTER THE DATE OF THE FINAL AGENCY ACTION. A DOCUMENT IS FILED WITH THE AGENCY CLERK 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 APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22, FLORIDA STATUTES.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this ____ day of _____, 2022.

gabriele ekong for _____
Agency Clerk
Florida Department of Economic Opportunity
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By U.S. Mail:

The Honorable Jodi-Ann Livingstone
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