

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 11/14/2007

Division: County Attorney

Bulk Item: Yes No

Staff Contact Person: Bob Shillinger

AGENDA ITEM WORDING:

Request for direction in the matter of *Monroe County v. Department of Community Affairs*, DOAH 06-2856GM.

ITEM BACKGROUND:

The BOCC unanimously passed Ordinance 015-2006 on April 19, 2006. That ordinance provided for a density bonus for small units of affordable housing by creating a definition for a "dwelling, half unit". For purposes of density calculations, a dwelling unit is counted as a half unit if it is a deed restricted affordable housing unit ranging in size from 400 to 750 square feet. The Department of Community Affairs rejected the ordinance based upon a finding that it was inconsistent with the County's comprehensive plan and the principals for guiding development in an area of critical state concern. The County challenged DCA's rejection of the ordinance in the above-referenced matter. That challenge is pending. Legal staff requests direction on whether to continue with the challenge. A status report is due with the DOAH hearing officer on November 30, 2007.

PREVIOUS RELEVANT BOCC ACTION:

Board previously met in closed session in January 2007.

CONTRACT/AGREEMENT CHANGES: n/a

STAFF RECOMMENDATIONS: n/a

TOTAL COST: None

BUDGETED: n/a

COST TO COUNTY: n/a

SOURCE OF FUNDS: n/a

REVENUE PRODUCING: n/a

APPROVED BY: County Atty xx OMB/Purchasing n/a Risk Management n/a —

DOCUMENTATION: Included xx Not Required

DISPOSITION: _____

AGENDA ITEM # _____

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MONROE COUNTY,
Petitioner,

v.

CASE NO.
DCA Final Order No. DCA06-OR-157

FLORIDA DEPARTMENT OF
COMMUNITY AFFAIRS,
Respondent.

_____ /

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS

Introduction

Monroe County, a political subdivision of the State of Florida, files this Petition for Formal Administrative Proceedings pursuant to Sections 120.569 and 120.57(1), Florida Statutes, to challenge the Final Order of the Department of Community Affairs rejecting the Land Development Regulation adopted by Monroe County and states as follows:

1. The challenged final order is: DCA06-OR-157, published in the Florida Administrative Weekly, Volume 32, No. 28, July 14, 2006.
2. The challenged final order rejects a land development regulation that seeks to implement portions of the Monroe County Comprehensive Plan and regulate land use and development within Monroe County.
3. This challenge is based on the consistency of the subject Land Development Regulation (LDR) with Chapter 380, Florida Statutes, the Area of Critical State Concern Act, and Florida Statutes, Section 125.01055 regarding Affordable Housing. The regulation encourages and allows the creation of more affordable housing by allowing a “dwelling

density bonus unit” and counting affordable dwelling units as half-units for the purpose of density computation if less than 750 square feet.

4. Petitioner seeks an administrative determination overturning the Final Order of the DCA on the basis that it is consistent with the requirements of Chapter 380, Florida Statutes, and Florida Statutes Section 125.01055 for the reasons stated below.

Identification of Petitioner and Other Parties

5. Petitioner, Monroe County, is a non-chartered county and a political subdivision of the State of Florida, whose address is 500 Whitehead Street, Key West, Florida 33040.
6. Respondent, Department of Community Affairs (“DCA”) is a State agency exercising powers granted to it by Section 380.05, Florida Statutes, to approve or reject land development regulations that are enacted, amended, or rescinded by any local government in the Florida Keys Area of Critical State Concern (“ACSC”). DCA’s address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

Explanation of How Petitioner’s Substantial Interests Are or Will be Affected

7. The Monroe County Board of County Commissioners has found that there is a current lack of sufficient affordable housing and a current estimated unmet need of over 7,300 affordable units within the County.
8. The Monroe County Board of County Commissioners has further found that the lack of sufficient affordable housing opportunities for the local work force creates serious risk to the local economy.

9. The Monroe County Board of County Commissioners has found that a limited land area suitable for residential development remains in the County and allowing a density bonus when building affordable housing will allow for the creation of more such housing and that such is a legitimate governmental interest and proper to implement goals 101 and 601 of the Monroe County Comprehensive Plan (Policy 101.4; Policy 101.4.5.; Policy 601.1.12; and Objectives 601.2 and 601.6). The Land Development Regulations in question specifically further Florida Statute Section 163.3202(3) by implementing an innovative land development regulation provisions such as transfer of development rights, incentive, and inclusionary housing.
10. The Monroe County Board of County Commissioners has further found that the Amendments to the LDRs in question specifically further Florida Statute Section 125.01055 providing “that a County may adopt and maintain in effect any law, ordinance, rule or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.”
11. If Monroe County is not allowed to utilize the Amendment to the LDRs in question and similar regulations it will be inhibited in its ability to increase the supply of affordable housing within the county and as such both the County and its citizens will be “adversely affected”.
12. Monroe County is a “substantially affected person” entitled to initiate this proceeding in accordance with the Florida Administrative Procedure Act.

When and How Notice Was Received

13. Notice of the Final Order was received via publication in the Florida Administrative Weekly, Volume 32, No. 28, July 14, 2006.
14. This Petition is filed within 21 days of the publication of the Notice of Final Order.

Statement of Material Facts Disputed and Alleged

15. Final Order No. DCA06-OR-157 (attached as “Exhibit A”) rejects Monroe County Ordinance No. 015-2006. (Attached as “Exhibit B”), which Ordinance amends Section 9.5-4 (Definitions), Section 9.5-262 (Maximum Residential Density and District Open Space), and Monroe County Section 9.5-352 (Required Parking).
 - a. Section 9.5-4 (D-31(a)) adds a new definition to the Monroe County Land Development Regulations of a “dwelling, density bonus unit” and defines same to mean “the additional number of dwelling half units that can be added to a site pursuant to means as defined in Section 9.5-262 and shall be (one (1) or more rooms physically arranged to create housekeeping establishment for occupancy by one (1) family with separate toilet facilities. The abbreviation ‘DDBU’ shall mean ‘dwelling density bonus unit.’.”
 - b. Section 9.5-4 (D-31(b)) creates a new definition of “dwelling half unit” to mean a “deed restricted affordable housing unit(s) as defined in MCC Section 9.5-4 (A-4-5) that range in size from 400 to 750 square feet which shall be considered one half (.5) of a

dwelling unit for the purposes of calculating density as laid out in Section 9.5-262.”

- c. Section 9.5-262 adds the following parenthetical allowance for density calculations for deed restricted affordable or employee housing units providing that units which range in size from 400 to 750 square feet shall be considered a dwelling half-unit as defined above.
- d. Section 9.5-352 creates a new category for required number of off street parking spaces requiring that dwelling half-units are only required to have 1.0 space per dwelling half unit as a minimal number off street parking.

16. The Final Order of the DCA found the Ordinance in question to be “inconsistent with the 2010 Monroe County Comprehensive Plan” in that “The Plan does not address half allocations or density bonuses for half allocations.” Petitioner contends that the Ordinance in question is consistent with the 2010 Monroe County Comprehensive Plan, specifically;

- (a) Goal 601 which states “Monroe County shall adopt programs and policies to facilitate access by all current and future residents to adequate affordable housing that is safe, decent and structurally sound and that meets the needs of the population based on type, tenure characteristics, unit size and individual preferences.”

(b) Policy 601.1.12 which states the County “shall adopt land development regulations which may include density bonuses, impact fee waiver program, and other possible regulations to encourage affordable housing.” [Emphasis added]

(c) Section 7.2.2 of the Monroe County 2010 Comprehensive Plan Technical Document provides for “special housing needs.” The Department of Community Affairs established an affordable housing task force for the Florida Keys in conjunction with the provision of technical assistance to Monroe County and made specific recommendations to the County to include regulatory reform to “explore and support the concept of establishing a new zoning designation for affordable housing. This could be handled as an overlay zone combined with other zoning tools or by site specific designations and/or special exceptions for specific sites.” Other recommendations of the DCA’s Task Force were as follows:

(1) “Local ordinances should be adopted which ease land development requirements and construction regulations to reduce the cost of affordable housing development.”

(2) “The following incentives should be provided for affordable housing projects and programs:

...

- Relaxation of traffic study requirements

- Density relaxation”

(d) Section 7.3.2 of the Monroe County 2010 Comprehensive Plan Technical Document further provides for strategies to meet the diverse housing needs of Monroe County’s projected population to include:

(1) “A range of residential land use categories shall be utilized;

(2) “A variety of residential density shall be provided to encourage the private sector to construct a variety of housing unit types.”

(e) The Department of Community Affairs has failed to follow the legislative intent of Florida Statute, Section 380.0552, which designates the Florida Keys Area as an Area of Critical State Concern and which granted the DCA the authority to reject the Ordinance in question, specifically:

“(2) LEGISLATIVE INTENT – it is hereby declared that it is the intent of the legislature is: . . .

(d) to provide for affordable housing in close proximity to places of employment in the Florida Keys.”

17. (a) In rejection of the Ordinance on the grounds that it was inconsistent with the principles for guiding development as set forth in Florida Statutes, Section 380.0552(7) the Department of Community Affairs has violated the specific intent of the legislature which states: “the

principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions”.

(b) Furthermore, one of the principles [F.S. §380.055(7)(j)] provides for Monroe County: “(j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.”

(c) The Department of Community Affairs has selectively utilized individual principles for guiding development without consideration of the affordable housing crisis in Monroe County and the necessity for implementation of ordinances adopted for the purpose of increasing the supply of affordable housing.

18. The Department of Community Affairs has ignored Florida Statute 125.01055 which states:

Affordable housing – Notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

Concise Statement of Ultimate Facts Alleged

19. The Ordinance which adopted the Land Development Regulations which were rejected by the Final Order of the Department are consistent with Monroe County’s approved and adopted 2010 Comprehensive Plan and is specifically authorized by Florida Statute Section 125.01055 in order to increase the supply of affordable housing within Monroe County.

Rules or Statutes Petitioner Contends Require Reversal or Modification of the

Agency’s Proposed Action

20. The Final Order violates the legislative intent as stated in Section 380.0552 and the principles for guiding development, Section 380.0552(7).

21. Florida Statutes Section 125.01055 specifically authorizes the County to enact the Ordinance which has been rejected by the Department of Community Affairs.

Relief Sought by Petitioner

WHEREFORE, it is respectfully requested that the Division of Administrative Hearings conduct a formal administrative hearing on the issues raised in this Petition and enter a Final Order determine the Final Order of the Department of Community Affairs to be invalid for the reasons stated above.

Respectfully submitted this 21st day of July, 2006.

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By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to the Secretary of the Department of Community and its General Counsel at 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100.

Jerry D. Sanders