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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO.:
LC Case No.: 09-1874GM

CITY OF HAINES CITY,
a Florida municipal corporation,

Petitioner,

vs.

STATE OF FLORIDA DEPARTMENT
OF COMMUNITY AFFAIRS, an agency of the
State of Florida; STATE OF FLORIDA,
DIVISION OF ADMINISTRATIVE
HEARINGS, an agency of the State of Florida.

Respondents.

_____ /

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

PETITION FOR WRIT OF PROHIBITION

Petitioner, City of Haines City (the "City"), by and through its undersigned attorneys and pursuant to Art. V, §4(b)(3), Fla. Const., Fla. R. App. P. 9.030(b)(3) and Fla. R. App. P. 9.100, respectfully seeks a Writ of Prohibition directed to the State of Florida Department of Community Affairs (the "DCA"), the State of Florida Division of Administrative Hearings ("DOAH") and the Honorable J. Lawrence Johnston, Administrative Law Judge for DOAH (the "ALJ") to prohibit the further exercise of jurisdiction by DCA, DOAH and the ALJ in the case of *Department of Community Affairs v. Haines City*, Case No. 09-1874GM, pending

before the State of Florida Division of Administrative Hearings in Leon County, Florida.

I. BASIS FOR INVOKING THE JURISDICTION OF THIS COURT

This Court has jurisdiction to grant this Petition for Writ of Prohibition pursuant to Art. V, § 4(b)(3), Florida Constitution, and Rules 9.030(b)(3) and 9.100, Florida Rules of Appellate Procedure. *See also Florida Dept. of Community Affairs v. Escambia County*, 582 So.2d 1237 (Fla. 1st DCA 1991) (holding that an extraordinary petition to challenge jurisdiction of an agency or division of administrative hearings is properly filed in the District Court of Appeal). The DCA's role in determining whether the City's Comprehensive Plan Amendment or the JPA is in compliance with Chapter 163, *Florida Statutes*, is quasi-judicial in nature and thus subject to a Writ of Prohibition. *State ex. rel. Swearingen v. Railroad Commissioners of the State of Fla.*, 84 So. 444, 445 (Fla. 1920) (holding that a writ of prohibition is appropriately issued to restrain an unauthorized or illegal judicial or quasi-judicial act even if such act is undertaken by an entity not strictly or technically considered a court).

II. FACTS UPON WHICH PETITIONER RELIES

In early 2006, the City initiated a process to plan for lands adjacent to the City in an area known as the City View Selected Area Plan ("CityVIEW SAP"). Although this area was outside of the then existing boundaries of the City, it was

completely within the City's Chapter 180 utility service area. Section 163.3167, *Florida Statutes* (2009) reads:

(1) The several incorporated municipalities and counties shall have power and responsibility:

(a) To plan for their future development and growth.

(b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.

(c) To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.

(d) To establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.

The powers and authority set out in this act may be employed by municipalities and counties individually or jointly by mutual agreement in accord with the provisions of this act and in such combinations as their common interests may dictate and require.

§ 163.3167, Fla. Stat.

Pursuant to Section 163.3171(1), *Florida Statutes* (2009), a municipality must exercise authority under Chapter 163 for the total area under its jurisdiction. "Area of jurisdiction" is defined as "the total area qualified under the provisions of this act, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to incorporated municipalities, all unincorporated lands with a county, or areas comprising combinations of the land in incorporated municipalities and unincorporated areas of counties." Additionally, a municipality may include areas adjacent to the municipality if the governing bodies of the municipality and the county in which the area is located agree on the

boundaries of such additional areas, on procedures for joint action in the preparation and adoption of the comprehensive plan, on procedures for the administration of land development regulations or land development code applicable thereto, and on the manner of representation on any joint body or instruction that may be created under the joint agreement. § 163.3171(1), Fla. Stat.

There is no requirement in Section 163.3171, *Florida Statutes*, or anywhere else in Chapter 163, which requires joint adoption of a plan amendment by a city and county. Moreover, there is nothing in Section 163.3171, *Florida Statutes*, or anywhere else in Chapter 163, which prohibits an area adjacent to a municipality from being included in both a municipality's comprehensive plan and a county's comprehensive plan. To the contrary, Section 163.3171, *Florida Statutes*, expressly contemplates permissive planning by a municipality on adjacent areas under an agreement with the county allowing for such extraterritorial planning. Section 163.3167(1), *Florida Statutes*, expressly provides that "[t]he powers and authorities set out in this act may be employed by municipalities and counties individually or jointly by mutual agreement in accordant with the provisions of this act and in such combinations to carry out the provisions and purposes of this act." (Emphasis added).

After identifying the SAP and over the next three years, the City met with Polk County, the DCA and the public to develop both the SAP and a Joint Planning

Agreement pursuant to Section 161.3171, *Florida Statutes*. Until approximately March of 2009, the DCA, through its employees and planners, encouraged the City in its efforts to develop and adopt the CityVIEW SAP and viewed the attempt as sound planning since the City was planning in advance of the actual annexation of the property into the City. During this time, the SAP was actually selected to receive the Florida Planning and Zoning Association's 2007 Outstanding Public Study Award.

In July, 2007, the City transmitted Comprehensive Plan Amendment 07-02 ("CPA 07-02") to the DCA. Although the City and the County had been in discussions regarding a JPA, a signed JPA had not yet been finalized. The City withdrew CPA 07-02 in December, 2007, and continued to work with the County to negotiate a JPA. On July 18, 2008, the City resubmitted the same plan amendment as Comprehensive Plan Amendment 08-01 ("CPA 08-01"). All procedural requirements were followed with regard to public hearings and public participation.

On January 21, 2009, the City and Polk County entered a Joint Planning and Interlocal Service Boundary Agreement (the "JPA"). [App. 001-014, January 21, 2009, Joint Planning and Interlocal Service Boundary Agreement]. The JPA was adopted after numerous work shops and public hearings. The City complied with and exceeded both the plan amendment adoption public participation requirements

as well as the JPA public participation adoption requirements of Section 163.3171, *Florida Statutes*.

In the JPA, the County agreed to the establishment of a joint planning area as the future urban expansion area of the CityVIEW SAP with recommended urban land uses. [App. at 003-005]. Rather than agree to the immediate joint adoption of the SAP, the County agreed and consented (1) that the City could adopt the plan amendment now and (2) the plan amendment would take effect in the unincorporated areas of the upon annexation of those areas by the City. [App. at 006-007]. In exchange, the City agreed to limit certain residential annexations to voluntary annexations within the JPA. [App. at 007-008].

While the City and Polk County could have provided for an immediate implementation date for the CityVIEW SAP, based upon comments received during the public comment process, both parties agreed it would make more sense to defer the densities provided in the plan until the parcels were actually annexed.

The County agreed not to approve densities or intensities of development in excess of the CityVIEW SAP if water and sewer were proposed to be provided from a non-City utility. [App. at 005-006]. Since the County's current comprehensive plan does not provide for urban levels of development absent central water and sewer service, the JPA has the effect of limiting the basis for permitting urban densities within the joint planning area to be consistent with the CityVIEW SAP.

This is because the City is the exclusive provider of water and sewer service within the CityVIEW SAP.

The County and the City agreed in the JPA to incorporate the boundaries of the joint planning area into their respective comprehensive plans for the purposes set forth in the JPA. [App. at 006-007].

On January 15, 2009, the City adopted Ordinance No. 08-1326 for the City's Amendment package DCA Number 09-01, which adds the CityVIEW SAP to the City's Growth Management Plan and adopts a Future Land Use Map, which covers some of the lands located in unincorporated Polk County. The land use designations only become effective upon annexation into the City.

On March 24, 2009, the DCA issued a Statement of Intent to find the Comprehensive Plan Amendment Not in Compliance. [App. 015-024, March 24, 2009, Statement of Intent to find Comprehensive Plan Amendment Not in Compliance]. The DCA's Notice of Intent interprets and construes the provisions of the JPA to find that the JPA does not comply with the requirements of Section 163.3171, *Florida Statutes*, because it does not contemplate the City and Polk County jointly exercising planning powers or submitting a joint comprehensive plan for this area. [App. at 015-024].

The DCA interpreted the agreement and found that it authorizes the City and Polk County to independently adopt plan amendments with respect to the

CityVIEW SAP. The DCA found that the JPA, as the DCA interpreted it, was not relevant or appropriate data to support the CityVIEW SAP. [App. at 015-024].

No one appeared at the City's Comprehensive Plan amendment adoption hearing to object to the amendment, and no one has intervened on the DCA'S side to object to the same. Polk County is not in opposition to the Comprehensive Plan amendment and has reaffirmed to the DCA its intent to authorize the City to adopt, in advance of annexation, plan amendments for County lands prior to (and effective upon) annexation.

On April 14, 2009, the DCA filed a Petition for Formal Administrative Hearing with the DOAH requesting that the DOAH, through an administrative law judge, issue a recommended order to the administration commission finding the City's Comprehensive Plan Amendment not in compliance based on the DCA's Statement of Intent, which interprets the JPA. J. Lawrence Johnston was appointed as the Administrative Law Judge, and the case has been assigned case number 09-1874GM; 09-1-NOI-5309 ("DOAH Proceedings").

The DOAH proceedings are currently pending, and a final hearing has been set for July, 7, 2010. Concurrently with the filing of this Writ, the City is filing a motion to abate the DOAH proceedings pending this Court's determination of the City's request for a Writ of Prohibition to prevent DOAH, the ALJ and the DCA from unlawfully exercising their jurisdiction. The City is also filing a declaratory

action against the DCA in the circuit court of the second judicial circuit in and for Leon County, Florida.

III. NATURE OF RELIEF SOUGHT

Petitioner, the City, respectfully requests a Writ of Prohibition from the District Court to prohibit the DCA, the DOAH and the ALJ from illegally asserting jurisdiction over and attempting to interpret provisions of the JPA and from impermissibly using their interpretations of the JPA to find the City's Comprehensive Plan not in compliance.

IV. ARGUMENT

The DCA is exceeding its jurisdiction in two primary ways. First, the DCA is impermissibly attempting to interpret the provisions of the JPA, a contract to which it is not a party. Furthermore, the DCA is attempting to use its interpretation of the JPA in order to find the City's Comprehensive Plan not in compliance. The DCA does not have the authority or jurisdiction to interpret contracts, and the effect and consequence of a JPA is not a relevant subject for consideration when determining whether a Comprehensive Plan should be found in compliance. Through the DOAH proceedings, the DCA is now asking DOAH and the ALJ to impermissibly construe the provisions and effect of the JPA and to use such interpretations to find the City's Comprehensive Plan not in compliance.

A Writ of Prohibition may be issued to prevent an inferior court or tribunal from exceeding jurisdiction or usurping jurisdiction over matters not within its jurisdiction. *English v. McCrary*, 348 So.2d 293, 296-297 (Fla. 1977). An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. *State Department of Environmental Regulation v. Falls Chase Special Taxing District*, 424 So.2d 787 (Fla. 1st DCA 1983), rev. denied 436 So.2d 98 (Fla. 1983). Any reasonable doubt as to the lawful existence of a particular power should be resolved in favor of arresting the further exercises of that power. *Fraternal Order of Police v. City of Miami*, 492 So.2d 1122, 1124 (Fla. 3rd DCA 1986).

DCA, DOAH and the ALJ lack express or implied statutory authority to interpret contracts to which it is not a party, interpret JPAs, or render compliance determinations based upon the interpretation of a JPA. Agencies may not interpret a party's contract and then enforce its interpretation on the parties. Jurisdiction to interpret such contracts is, under our system, vested solely in the judiciary. *Lennar Homes, Inc. v. DBPR, Division of Fla. Land Sales, Condos, & Mobile Homes*, 888 So.2d 50, 55 (Fla. 1st DCA 2004).

DOAH does not have inherent authority to enforce or rescind contractual instruments. *School Board of Lee Co. v. M.C.*, 796 So.2d 581, 582-83 (Fla. 2d DCA 2001). Jurisdiction to determine contractual rights among private parties resides exclusively in the circuit courts. *Fleischman v. Dept. of Prof. Reg.*, 441 So.2d 1121, 1122-1123 (Fla. 3rd DCA 1983). DCA, DOAH and the ALJ are not parties to the JPA between Polk County and the City. While some agencies have been granted express legislative authority to approve certain specific types of interlocal agreements (i.e., § 373.1962, *Fla. Stat.*), DCA and DOAH have never been granted any authority to review, interpret, approve, or enforce any JPA. Nor has DCA or DOAH ever exercised such authority.

Furthermore, the validity of a JPA is not even a relevant subject for an in compliance determination by the DCA. § 163.3184(1)(d), *Fla. Stat.*; *1000 Friends of Florida, Inc. v. Department of Community Affairs and City of Stuart*, 824 So.2d 989 (Fla. 4th DCA 2002). Nor is the statute authorizing JPAs, Section 163.3171, *Florida Statutes*, contained within the statutory criteria against which compliance is measured.

Finally, DCA has no authority to collaterally attack a JPA in a comprehensive planning proceeding. *East Central Florida Regional Wastewater Facilities Operation Board v. City of West Palm Beach and Department of Community Affairs*, 659 So.2d 402 (Fla. 4th DCA 1995) (holding the DCA only has the power

delegated to it by the legislature and that it specifically lacked the jurisdiction to interpret an Interlocal agreement entered into by a special district over which DCA lacked jurisdiction). The DCA cannot utilize one process to collaterally attack an Interlocal agreement, which is exactly what the DCA is attempting to do in this case.

In order to find the City's Comprehensive Plan not in compliance, the DCA, DOAH and the ALJ are attempting to interpret the JPA, an Interlocal agreement between the City and Polk County. In order to find the Comprehensive Plan not in compliance, the DCA has impermissibly attempted to determine whether the JPA is effective and binding, and if so, when it becomes effective and binding, and what the consequences of its terms are. [App. at 015-024]. However, jurisdiction to interpret contracts is vested solely in the judiciary. *Peck Plaza Condominium v. Division of Florida Land Sales and Condominiums, Dept. of Business Regulation*, 371 So.2d 152 (Fla. 1st DCA 1979). Since there has been no statutory grant of power to the DCA or the DOAH to interpret and enforce JPAs or other Interlocal agreements, the DCA and DOAH are without authority to interpret the JPA in order to find the City's Comprehensive Plan not in compliance.

The City will be irreparably harmed if the DCA and DOAH continue to impermissibly assert jurisdiction over the JPA. If the DCA is permitted to act beyond its jurisdiction, the City will have lost and wasted over \$800,000 in money

spent to prepare and adopt its Comprehensive Plan amendment based on what will become dated data and analysis, and the City will have to incur additional taxpayer dollars to readopt the plan amendment as each piece of property is annexed into the City despite the City's compliance with the adoption process for the entire area of land.

If such writ of prohibition is not granted, the City will be forced to endure the time and expense of an administrative proceeding involving two agencies (to wit, the Department of Community Affairs and the Division of Administrative Proceedings) neither of which has authority to question, interpret, or apply the JPA. Because DCA based its decision of "not in compliance" on an issue (i.e., contract interpretation) over which they lack jurisdiction or authority, and now asks DOAH to do the same, the DCA's decision is tainted and so would be any decision by DOAH.

The City is put in the position of having to litigate the compliance determination, then judicially appeal the decision to an appellate court without an underlying lower tribunal proceeding competent to determine the validity of the contract. That court would then be faced with remanding the flawed decision to two tribunals – a circuit court to determine any factual issues related to the validity and meaning of the contract and an administrative law judge to rehear the tainted

compliance determination. By exercising jurisdiction now, this Court can avoid such meaningless proceedings, thus preserving judicial economy.

The DCA's decision (and any corresponding decision by DOAH or the ALJ) discourages flexibility in intergovernmental planning and joint planning agreements, which is inconsistent with past DCA policies. DCA has in fact previously approved and found in compliance plan amendments adopted pursuant to similar contracts.

No adequate remedy at law exists by which the City may receive complete, timely and adequate relief. *State ex rel. Smith v. Gomez*, 179 So. 651 (Fla. 1938); *Scussel v. Kelly*, 152 So. 2d 767 (Fla. 2d DCA 1963) (holding an alternative remedy is not sufficient if it does not afford the relief a case demands and that when issuing a writ of prohibition, a court must consider the expense, delay, and inconvenience of forcing petitioner to seek alternative remedies at law).

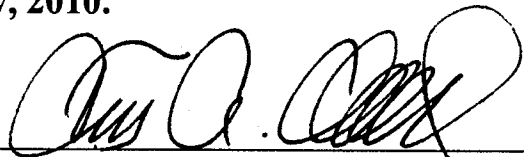
The writ of prohibition will not cause harm upon the public, but rather is in the public's best interest, because if the writ is not granted, hundreds of thousands of publicly funded dollars will have been wasted. Furthermore, the citizens of the City will suffer the consequences of the DCA's (and possibly DOAH's) decision, which will curtail smart, joint planning between the City and Polk County.

V. CONCLUSION

DCA, DOAH and the ALJ do not have the authority or jurisdiction to interpret contracts. Moreover, the effect and consequence of a JPA is not even a relevant subject for consideration when determining whether a Comprehensive Plan should be found in compliance. DCA, DOAH and the ALJ are clearly attempting to act outside their jurisdiction.

WHEREFORE, Petitioner, the City of Haines City, respectfully requests this Honorable Court to issue a Writ of Prohibition and order nisi / order to show cause prohibiting the DCA, the DOAH and the ALJ from any further extra jurisdictional attempts to exercise review authority over the JPA, and to grant whatever other relief this court deems just and equitable.

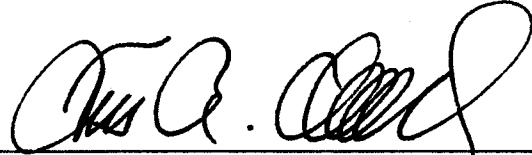
Dated this 3rd day of February, 2010.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to: David Jordan, Assistant General Counsel, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100 and The Honorable J. Lawrence Johnston, Administrative Law Judge for DOAH, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060.

A handwritten signature in black ink, appearing to read 'T.A. Cloud', is written over a horizontal line.

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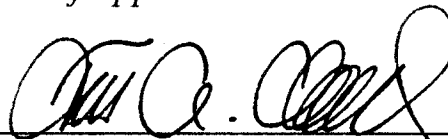
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CERTIFICATE OF COMPLIANCE WITH RULE 9.100

I HEREBY CERTIFY that the foregoing complies with the font and all other requirements of Rule 9.100, *Florida Rules of Appellate Procedure*.

A handwritten signature in black ink, appearing to read 'T.A. Cloud', written over a horizontal line.

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