

In re: Charlotte County Comprehensive Plan Amendment,
DCA No. 10-1-NOI-0801-(A)-(I), adopted by Ordinance
Numbers 2010-33; 2010-34; 02010-036 through 2010-048

2010 SEP 23 PM 10:28
COUNTY COMMISSION OFFICE

✓ Administrator
✓ Attorney

**PETITIONER, FRIENDS OF CAPE HAZE, INC.'S PETITION FOR AN EVIDENTIARY
ADMINISTRATIVE HEARING**

Petitioner, FRIENDS OF CAPE HAZE, INC., a Florida not-for-profit corporation, petitions the Department of Community Affairs ("DCA") for an evidentiary administrative hearing pursuant to §163.3184(9), Fla. Stat., to determine that the proposed Charlotte County Comprehensive Plan Amendments approved on September 7, 2010, are not in compliance with Chapter 163, Florida Statutes, and states as follows:

1. Pursuant to F.A.C. 28-106.201, this Petition for Evidentiary Administrative Hearing is directed to the Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, FL 32399-2100. Charlotte County, 18500 Murdock Circle, Port Charlotte, FL 33948, will have an interest in the outcome of this administrative proceeding.

2. DCA's Docket No. is 10-1-NOI-0801-(A)-(I). Charlotte County's Ordinance Nos. 2010-033, 2010-034, 2010-036, 2010-039 through 2010-048 are at issue in DCA's findings of "in compliance" pursuant to § 163.3184, Fla. Stat.

3. Undersigned is counsel to Petitioner, FRIENDS OF CAPE HAZE, INC. ("FCH"), which is a not-for-profit corporation organized under the laws of the State of Florida that maintains an office for the regular transaction of business in Charlotte County, Florida. Undersigned counsel's contact information is as follows: Brad E. Kelsky, Esq., Law Offices of Brad E. Kelsky, P.A., 10189 Cleary Blvd., Suite 102, Plantation, FL 33324. Phone number: 954.449.1400; Fax Number: 954.449.8986. FRIENDS OF CAPE HAZE is located at 11000 Placida Drive, Placida, FL 33946. Phone number: 612.632.3065.

4. FCH's principal place of business is Charlotte County Florida. Separately, the individual members of FCH own property and/or reside within the boundaries of Charlotte County. FCH submitted oral and/or written comments, recommendations and/or objections to Charlotte County during the period of time beginning with the transmittal hearing for the comprehensive plan amendments and ending with the adoption of same by September 7, 2010, the date that DCA approved the comprehensive plan amendments. As a result, FCH is an "affected person" as that term is defined pursuant to § 163.3184(1)(a), Fla. Stat. The health, safety and welfare of Petitioner's substantial interests will be affected by DCA's "in compliance" determination as more specifically set forth below.

5. Petitioner received notice that DCA determined Charlotte County's proposed comprehensive plan amendments, set forth in Charlotte County Ordinance Numbers 2010-33; 2010-34; 2010-036; 2010-039 through 2010-048, were "in compliance" pursuant to §163.3184, Fla. Stat., via email on September 7, 2010.

6. Statement of Disputed Facts pursuant to 28-106.201, F.A.C.:

A. The Revitalizing Area Plus Incentive Density (RAPID) units inappropriately increase density in capped areas, create "ghost" density situations and place at risk the health, safety and welfare of Charlotte County citizens in the Coastal High Hazard Area;

B. The 771/775 area (defined below) does not meet the definition of "Revitalizing Area;"

C. The designation of the 771/775 area as a Revitalizing Area is not based upon relevant and appropriate data in violation of Florida Statutes and the Florida Administrative Code (as more particularly set forth below);

OFFICE
ATTORNEY'S
COUNTY

2010 SEP 24 AM 10:30

- D. Designating the 771/775 area as a Revitalizing Area allows Charlotte County to avoid a FLUM amendment in violation of the Growth Management Act and is not based upon relevant and appropriate data as required by § 163.3177(8) and (10)(e) and F.A.C. 9J-5.005;
- E. Relaxing TDU limitations in the Coastal High Hazard Area increases density in an otherwise capped area, increases density in the CHHA, violates an agreement reached between DCA and Charlotte County and violates statutory urban sprawl limitations as set forth in 163.3177(6)(a), Fla. Stat.; and
- F. The County has recognized that the evacuation time for the peninsula area is 20 hours and the increase in density will only prolong this time.

7. Fla. Stat. § 163.3184(9)(a) provides that an “affected person” may “file a petition with the agency pursuant to ss. 120.569 and 120.57 within 21 days after the publication of notice.”

8. Petitioner believes that DCA’s determination that Charlotte County’s Comprehensive Plan Amendments to be “in compliance” is erroneous.

9. Pursuant to 28-106.201, F.A.C., the ultimate facts warranting reversal along with an explanation of the statutes and administrative code sections violated are set forth below.

10. After the initial transmittal, and not as a response to the ORC report, an addition to the proposed Charlotte County comprehensive plan amendments created 13,092 RAPID density (Revitalizing Area Plan Incentive Density) units. The county can allocate these 13,092 units among various areas designated as Revitalizing Areas. This amounts to “ghost density” since such density is not currently available for use and since the method and manner of

allocation of such density is unclear. The County could arbitrarily allocate these units into the Coastal High Hazard Areas (CHHA) including the Cape Haze Peninsula where densities have been capped. Petitioners believe that this “ghost” density violates § 163.3177(6)(a) and (14)(b)(2), Fla. Stat., and F.A.C. 9J-5.005(2). As a result, DCA should determine that this element of the proposed comprehensive plan is not in compliance with the Growth Management Act or the rules promulgated under same.

11. For example, after the transmittal adoption, but not in response to the ORC report, Charlotte County designated the County Road 771/775 intersection (by the Boca Grande Causeway) (“771/775”), located in the CHHA, to be a Revitalizing Area which allows for increased density and growth.

12. The “Revitalizing Area” designation requires there be “aging residential housing stock.” The 771/775 area does not meet this definition as much of the area is undeveloped, there is limited residential development, and there are commercial and industrial operations at that location. In other words, this area is not primarily residential and the decision to designate 771/775 as a “Revitalizing Area” is not based upon relevant and appropriate data as required by § 163.3177(8) and (10)(e), Fla. Stat., and F.A.C. 9J-5.005. As a result, DCA should determine that this area is not a Revitalizing Area and should determine that this element of the proposed comprehensive plan is not in compliance with the Growth Management Act or the rules promulgated under same.

13. The inclusion of this Revitalizing Area in the CHHA is per se inappropriate as the infrastructure cannot handle the emergency needs required of the area given the fact it is located on a two-lane bridge in the middle of an evacuation route. Again, this decision is not based

upon relevant and appropriate data as required by § 163.3177(8) and (10)(e), Fla. Stat., and F.A.C. 9J-5.005.

14. Further, designating the 771/775 intersection as a Revitalizing Area creates an inherent inconsistency within the plan itself. Specifically, the current plan bars development above the zoning designation but below the FLUM in the CHHA. However, designating ~~771/775 as a Revitalizing Area allows for an increase in density within the CHHA without a~~ FLUM amendment given the “ghost density” and other provisions for addition of density to Revitalizing Areas. This is essentially an “end run” to avoid a FLUM amendment in violation of applicable Florida statutes and, further, inappropriately increases density within the capped-CHHA. Again, this is inconsistent with the Growth Management Act, the rules promulgated pursuant to same and is not based upon relevant and appropriate data as required by § 163.3177(8) and (10)(e) and F.A.C. 9J-5.005. Thus, DCA should determine that this designation is not in compliance.

15. Moreover, Transfer of Density Units (TDUs) are strictly limited in West County and the CHHA. The new Comprehensive Plan draft relaxes the restriction on the TDUs which, in turn, increases density in these protected areas. This problem is only compounded by the fact that the “ghost” densities likewise increase the density of West County, Cape Haze and the CHHA in violation of restrictions designed to combat urban sprawl in the existing comprehensive plan and the Florida statutes. In addition to DCA’s breach of its agreement with Charlotte County regarding urban sprawl, allowing for TDUs into the CHHA area violates § 163.3177(6)(a), Fla. Stat. Again, the proposed comprehensive plan changes concerning this issue are not based upon relevant and appropriate data as required by § 163.3177(8) and (10)(e)

WHEREFORE, Petitioner, FRIENDS OF CAPE HAZE, INC., a Florida not-for-profit corporation, requests the Department of Community Affairs to grant an evidentiary hearing to determine that the proposed plan amendments are not "in compliance" with Chapter 163, to rescind its "in compliance" findings and to provide FCH with any other relief that may be just, equitable and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via FedEx this 23rd day of September to:

Agency Clerk
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Thomas G. Pelham, AICP
Florida Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
850-488-8466

Charlotte County Board of County Commissioners
Charlotte County Administration Center
18500 Murdock Circle
Port Charlotte, FL 33948

LAW OFFICES OF BRAD E. KELSKY, P.A.
Attorney for Friends of Cape Haze, Inc.
10189 Cleary Blvd.
Suite 102
Plantation, FL 33324
(954) 449-1400
Fax: (954) 449-8986
Email: bradkelsky@kelskylaw.com

BY: 

BRAD E. KELSKY
FBN: 0059307