

**DISTRICT COURT OF APPEAL, FIRST DISTRICT  
2000 Dayton Drive  
Tallahassee, FL 32399-0950  
Telephone No. (850) 488-6151**

SARASOTA COUNTY, FLORIDA,  
CALLE MIRAMAR, LLC, SKH 1, LLC,  
1260, INC., STICKNEY STORAGE, LLC,  
and SIESTA KEY PARKING, LLC,

Case No. 1D23-1058  
L.T. No. 22-1385GM

Appellants,

v.

LOURDES RAMIREZ and DEPARTMENT  
OF COMMERCE,

Appellees.

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**APPELLANT SARASOTA COUNTY'S RESPONSE  
TO ORDER TO SHOW CAUSE**

Appellant SARASOTA COUNTY, FLORIDA (“the County”), by and through its undersigned attorneys, responds to this Court’s order to show cause dated August 29, 2023. Considering the following, the County respectfully requests that this Court either stay these proceedings pending a final order issued by the Administrative Commission or dismiss without prejudice to refile once the Administration Commission has entered a final order.

Here, there is some question as to whether there is a “final order” which may be appealed. The confusion is created by conflicting provisions of state law. On

November 17 and 18, 2022, the Administrative Law Judge conducted a hearing, pursuant to the requirements of section 163.3213, Florida Statutes, to determine whether the County's land development regulation was consistent with its comprehensive plan. "The hearing shall be held pursuant to ss.

120.569 and 120.57(1), *except that the order of the administrative law judge shall be a final order and shall be appealable pursuant to s. 120.68.*" § 163.3213(5)(a), Fla. Stat. (2022) (emphasis added).

Thus, under subsection 163.3213(5), the timing for filing a notice of appeal is governed by section 120.68(2)(a), Florida Statutes, which states:

Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. *All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed.* If the appeal is of an order rendered in a proceeding initiated under s. 120.56, the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

*Id.* (Emphasis added.)

However, there is an apparent conflicting provision in subsection 163.3213(6). For proceedings involving administrative review of the consistency of a land development regulation to a comprehensive plan, the time of an appeal is also governed by section 163.3213(6), Florida Statutes, which states:

If the administrative law judge in his or her order finds the land development regulation to be inconsistent with the local

comprehensive plan, the order will be submitted to the Administration Commission. *An appeal pursuant to s. 120.68 may not be taken until the Administration Commission acts pursuant to this subsection.* The Administration Commission shall hold a hearing no earlier than 30 days or later than 60 days after the administrative law judge renders his or her final order. *The sole issue before the Administration Commission shall be the extent to which any of the sanctions described in s. 163.3184(8)(a) or (b)1. or 2. shall be applicable to the local government whose land development regulation has been found to be inconsistent with its comprehensive plan.* If a land development regulation is not challenged within 12 months, it shall be deemed to be consistent with the adopted local plan.

*Id.*

Next, section 163.3148(8), Florida Statutes, details the process by which the Administration Commission determines any applicable sanctions as follows:

**(8) Administration commission.**

**(a)** If the Administration Commission, upon a hearing pursuant to subsection (5), finds that the comprehensive plan or plan amendment is not in compliance with this act, the commission shall specify remedial actions that would bring the comprehensive plan or plan amendment into compliance.

**(b)** The commission may specify the sanctions provided in subparagraphs 1. and 2. to which the local government will be subject if it elects to make the amendment effective notwithstanding the determination of noncompliance.

**1.** The commission may direct state agencies not to provide funds to increase the capacity of roads, bridges, or water and sewer systems within the boundaries of those local governmental entities which have comprehensive plans or plan elements that are determined not to be in compliance. The commission order may also specify that the local government is not eligible for grants administered under the following programs:

**a.** The Florida Small Cities Community Development Block Grant Program, as authorized by ss. 290.0401-290.048.

**b.** The Florida Recreation Development Assistance Program, as authorized by chapter 375.

**c.** Revenue sharing pursuant to ss. 206.60, 210.20, and 218.61 and chapter 212, to the extent not pledged to pay back bonds.

2. If the local government is one which is required to include a coastal management element in its comprehensive plan pursuant to s. 163.3177(6)(g), the commission order may also specify that the local government is not eligible for funding pursuant to s. 161.091. The commission order may also specify that the fact that the coastal management element has been determined to be not in compliance shall be a consideration when the department considers permits under s. 161.053 and when the Board of Trustees of the Internal Improvement Trust Fund considers whether to sell, convey any interest in, or lease any sovereignty lands or submerged lands until the element is brought into compliance.

*Id.* Notably, these provisions discuss comprehensive plans or plan amendments which are not in compliance, leading to confusion as to its applicability.

The instant case involves a land development regulation. Further, the language in subsection 163.3184(8)(b) specifies that the Administration Commission *may* sanction the local government and that the local government could elect to make a comprehensive plan amendment effective “notwithstanding the determination of noncompliance.” This statute does not identify the nature of

the order of the Administration Commission. Is it an additional final order subject to a separate appeal? Or is the order of the Administrative Law Judge a nonfinal order for purposes of appeal despite the statute's identification of the order as being final? The statute also does not identify *whether* or *when* the Administration Commission must enter a written order. Thus, the statute leaves an ambiguity as to the proper point of entry into additional appellate proceedings. If the County did not appeal the Administrative Law Judge's Amended Final Order, would the doctrine of administrative finality bar the County from appealing the Amended Final Order if the Administration Commission failed to act?

Because of the statute's failure to identify whether the Administration Commission must enter a written order, in an abundance of caution and to preserve the County's appellate rights, the County filed a notice of appeal on May 3, 2023.

On May 23, 2023, the Administration Commission conducted a hearing on the sole issue of sanctions. At the conclusion of the hearing, the Administration Commission indicated that it was going to take the matter under advisement. The Commission members also indicated they may not need to act immediately because of the pending appeals filed by the County and the hotel owners.

As of the date of this response, the Administration Commission has not entered a written order. Thus, the Administration Commission has not determined whether it will sanction Sarasota County.

WHEREFORE, in the event the Court determines that this notice of appeal has been filed prematurely, the County respectfully requests that this appeal be placed in abeyance until such time as the Administration Commission has acted or dismiss this appeal without prejudice to refile once the Administration Commission has entered a final order.

Respectfully submitted on this 8<sup>th</sup> day of September 2023.

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/s/ David M. Pearce  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been e-filed with the First District Court of Appeal through the E-filing Portal and has been furnished by email to the following on this 8<sup>th</sup> day of September 2023:

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