

MEMORANDUM

February 9, 2010

TO: Honorable Mayor and City Commissioners

VIA: Judith H. Delmar, City Manager^{jhd}

FROM: Kathy Bangley, Assistant Director of Planning and Development

SUBJECT: Stipulated Settlement Agreement between the Department of Community Affairs, the City of Lake Wales and Hunt Brothers Groves Inc.

SYNOPSIS: The Stipulated Settlement Agreement addresses those issues raised by the Department of Community Affairs Notice of Intent to find ordinances D2007-09 and D2007-11 not in compliance dated March 11, 2008.

RECOMMENDATION

It is recommended that the City Commission consider taking the following action:

1. Approve the Stipulated Settlement Agreement as presented and direct staff to prepare the necessary comprehensive plan amendments to adopt the Remedial Action as shown in Exhibit B.

BACKGROUND

City Staff along with Corby Meyers and Augie Fragala as representatives for Hunt Brothers Groves Inc. have spent the last two years negotiating with the Department of Community Affairs to craft a settlement statement and plan of action to address the objections raised by the department to ordinances D2007-09 (172 acres Packing Plant Property) and D2007-11 (46.1 acres South Side of SR 60E). The Stipulated Settlement Statement and the accompanying Remedial Action are the results of those negotiations.

In late 2007 the city annexed five properties owned by Hunt Brothers Groves, Inc. Upon transmittal to DCA for review of the proposed land use designations the two above referenced properties were found to be non-compliant with the city's comprehensive plan. The one specific area of concern was transportation and its compliance with the State's comprehensive plan.

The compliance issues associated with the adopted land use changes pertained to the lack of data and analysis regarding the impact of the amendments on transportation facilities in the vicinity of the subject sites in order to demonstrate that there was adequate roadway capacity to accommodate the increased demand created by the amendment. Transportation data and analysis is provided by the applicant to the City at time of application for a comprehensive plan amendment. The remedial action proposed will restrict the amount of floor area ratio permitted on the subject properties and includes improvements to roads that will be impacted. Road

capacity and possible failure of level of service standards is a concurrency issue that will be addressed at the time of development per city regulations.

The Stipulated Settlement Agreement as presented has been executed by the Department of Community Affairs, Ellis Hunt Jr. for Hunt Brothers Groves Inc. and signed by Chuck Galloway as to form.

OTHER OPTION

Commission could instruct staff to reopen negotiations with Hunt Brother Groves Inc. and the Department of Community Affairs

FISCAL IMPACT

None

ATTACHMENTS

Stipulated Settlement Agreement

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

v.

Case No. 08-1611 GM

CITY OF LAKE WALES,

Respondent,

and

HUNT BROS. GROVES, INC. ,

Intervenor.

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and among the State of Florida Department of Community Affairs, as Petitioner; the City of Lakes Wales, Florida, as Respondent, and Hunt Bros. Groves, Inc., a Florida corporation, as Intervenor, as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the State of Florida Department of Community Affairs (hereinafter the "DCA") is Florida's state land planning agency and has the authority to administer and enforce the Local Government Comprehensive

Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes (“F.S.”); and

WHEREAS, the City of Lake Wales, (hereinafter, the “City”), is a Florida local government with the power to adopt comprehensive plan amendments that are “in compliance;” and

WHEREAS, Hunt Bros. Groves, Inc. (“Hunt”), is a Florida corporation that has intervened in this action on behalf of the City and for purposes of this Agreement is considered a party thereto and not a third party; and

WHEREAS, the City on January 15, 2008, adopted Comprehensive Plan Amendment 07-02 by ordinances number D2007-09 through D2007-13; and

WHEREAS, the Plan Amendment contains six Future Land Use Map (“FLUM”) amendments totaling approximately 1,050 acres. The amendments are in conjunction with recently annexed property and represent changes from the Polk County land use designation of *Agriculture/Rural Residential* to the City’s designations of *Low Density Residential, business Park Center, Industrial and Community Activity Center*.

WHEREAS, the DCA issued its Statement and Notice of Intent regarding the Amendment on March 11, 2008; and

WHEREAS, as set forth in the Statement of Intent, the DCA contends that the Amendment is not “in compliance” because ordinances D2007-09 and D2007-

11 propose amendments that will increase development potential on two sites affected by the Amendment and would result in one or more of the following roadways operating below the adopted level of service: County Road 17-B, State Road 17, State Road 60 and U.S. Highway 27.

WHEREAS, pursuant to Section 163.3184(10), F.S., the DCA has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the City, joined by Hunt, as Intervenor, disputes the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein and agree it is in their best and respective mutual interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinbelow set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. **Definitions.** As used in this Agreement, the following words and phrases shall have the following meanings:

- a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, F.S.
- b. Agreement: This Stipulated Settlement Agreement.
- c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive Plan Amendment 07-02, adopted by the City on January 15, 2008, by ordinances no. D2007-09 through D2007-13.
- d. DOAH: The Florida Division of Administrative Hearings.
- e. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), F.S.
- f. Notice: The Notice of Intent issued by the DCA to which was attached its Statement of Intent to find the plan amendment not in compliance.
- g. Petition: The petition for administrative hearing and relief filed by the DCA in this case.
- h. Remedial Action: A Remedial Plan Amendment, submission of support document or other action described in the Statement of Intent or this Agreement as an action which must be completed to bring the plan amendment into compliance.
- i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this Agreement, including its exhibits, and which the local government must adopt to complete all remedial

action. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the DCA, be consistent with the and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the DCA.

j. Statement of Intent: The statement of intent to find the Plan Amendment not in compliance issued by the DCA in this case.

h. Support Document: the studies, inventory, maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. DCA Powers. The DCA is Florida's state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment or Remedial Plan Amendment is in compliance.

3. Negotiation of Agreement. The DCA issued its Notice and Statement of Intent to find the Plan Amendment not in compliance and filed the Petition in this case to that effect. Subsequent to the filing of the Petition, the parties conferred and agreed to resolve through this Agreement the issues in the Petition and Notice and Statement of Intent. It is the intent of this Agreement to resolve fully all issues among the parties in this proceeding.

4. Dismissal. If the City completes the Remedial Actions required by this Agreement, the DCA will issue a cumulative Notice of Intent addressing both the

Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings. The DCA will file the cumulative Notice of Intent with the DOAH. The DCA will also file a request to relinquish jurisdiction to the DCA for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184 (16)(f), F.S.

5. Description of Provisions Not in Compliance and Remedial Actions:

Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B to this Agreement contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6. Remedial Action to be Considered for Adoption. The City agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the City shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the City shall

transmit five (5) copies of the amendment to the DCA as provided in Rule 9J-11.011(5), Florida Administrative Code ("F.A.C."). The City also shall submit one (1) copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted Intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the DCA along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 1563.3184(8), F.S., do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendment and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendment and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, F.S., for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, this DCA shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The DCA shall file this cumulative notice with the DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in compliance: If the Remedial Actions do not satisfy this Agreement, the DCS shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to the DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), F.S.

11. Purpose of this Agreement: Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposal for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the City's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(16)(c), F.S. This Agreement has been

executed by the appropriate officer as provide in the City's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this Agreement, the statute or regulation shall take precedence and shall be deemed incorporated into this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the DCA, the City and Hunt.

17. Filing and Continuance. This Agreement shall be filed with the DOAH by the DCA after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with 163.3184(16)(b), F.S.

18. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire Agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the City in the exercise of governmental discretion which is exercisable in according with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be used to construe or interpret any provision of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR UNDERSIGNED OFFICIALS AS DULY AUTHORIZED.

DEPARTMENT OF COMMUNITY AFFAIRS

By: Charles Gauthier
Charles Gauthier, Director
Division of Community Planning

1/13/10
Date

Approved as to form and legality

Dana Jordan
Asst. General Counsel

1/12/2010
Date

CITY OF LAKE WALES

By: _____

Title

Date

Approved as to form and legality

[Signature]
City Attorney

1-19-2010
Date

HUNT BROS. GROVES, INC.

By: [Signature]
President

Title

1-18-10
Date

Approved as to form and legality

[Signature]
Counsel for Hunt Bros. Groves, Inc.

1-18-10
Date

EXHIBIT A

**DCA STATEMENT OF INTENT TO FIND
ORDINANCES D2007-09 AND D2007-11
NOT IN COMPLIANCE**

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: THE CITY OF LAKE WALES
COMPREHENSIVE PLAN AMENDMENT
08-1; AMENDING THE FUTURE LAND
USE MAP

Docket No. 08-1-NOI-5314-(A)-(N)

STATEMENT OF INTENT TO FIND A PORTION OF
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes, and Rule 9J-11.012(6), Florida Administrative Code, hereby issues this Statement of Intent to find a portion of Comprehensive Plan Amendment 08-1 ("Amendment") adopted by the City of Lake Wales by Ordinances Nos. D2007-09 through D2007-13 on January 15, 2008, Not In Compliance based upon the Objections, Recommendations, and Comments Report (ORC Report) issued by the Department on November 30, 2007, which are hereby incorporated by reference and based upon the changes made by the City to the plan amendments as adopted. The Department finds Ordinances D2007-09 and D2007-11 "not in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes (F.S.), for the following reasons:

I. FUTURE LAND USE MAP

A. Inconsistent provisions. The inconsistent provisions of the Amendment under this subject heading are as follows:

I. Transportation. The proposed amendments will increase development potential on the two sites and would result in one or more of the following roadways operating below the adopted level of service: County Road 17-B, State Road 17, State Road 60, and US Highway 27. The City has not provided information which; (1) identifies the impact of the peak hour vehicle trips on the projected operating level of service for State Road 60, State Road 17; and US 27; (2) the need for road improvements (scope, timing and cost of improvements) or other planning alternatives to maintain the adopted level of service standards for roadways; (3) coordination of the road improvements or other planning alternatives with the Future Land Use Element, Traffic Circulation Element (including Future Transportation Map), and Capital Improvements Element, and implementation through the Five-year Schedule of Capital Improvements; and (4) coordination of the road improvements with the plans of the Florida Department of Transportation and the Polk Transportation Planning Organization. The amendments have not been demonstrated to be consistent with the Future Land Use Element, Traffic Circulation Element, and Capital Improvements Elements. The amendment is inconsistent with the following Rules and Statutes: Rules 9J-5.005(2) and (5), 9J-5.006(2)(a) and (3)(b)1; 9J-5.016(1)(a); 9J-5.016(2)(b, c, and f); 9J-5.016(4)(a)1, 2; 9J-5.019(3)(f, g, h, and i); 9J-5.019(4)(b)2 and 3; 9J-5.019(4)(c)1; 9J-5.019(5)(a and b), Florida Administrative Code (F.A.C.); and Sections 163.3177(2), (3)(a), (5)(a), (8), and (10)(a) and (e); 163.3177(6)(a and b), Florida Statutes (F.S.).

B. Recommended Remedial Actions. Revise the amendments to include the data and analysis necessary to appropriately support the amendments and demonstrate coordination of land use with the planning and implementation of transportation facilities and coordination with the Capital Improvements Element. Revise the Traffic Circulation Element, Capital

Improvements Element, and Future Land Use Element, as necessary, to be consistent with and supported by the data and analysis and to achieve internal consistency with the FLUM. The Five-year Schedule of Capital Improvements should be revised to include any needed improvements to maintain the adopted level of service within the five-year planning timeframe. Include data and analysis demonstrating coordination of the amendments with the plans of the Florida Department of Transportation and the Polk Transportation Planning Organization. Revise the amendments, as necessary, to be consistent with and supported by the data and analysis.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The Amendment is inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187, Florida Statutes, including the following provisions:

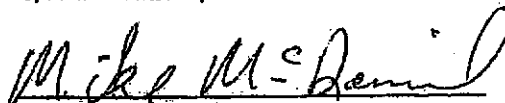
1. Transportation. The Amendment is inconsistent with the Goal set forth in Section 187.201(19)(a), F.S., and the Policies set forth in Section 187.201(19)(b)2, 3, 7, 9 and 13, F.S.

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendment as described above in Sections I and II.

CONCLUSIONS

1. The Amendments identified above are not consistent with the State Comprehensive Plan;
2. The Amendments identified above are not consistent with Chapter 9J-5, F.A.C.;
3. The Amendments identified above are not consistent with the requirements of Chapter 163, Part II, F.S.;
4. The Amendments identified above are not "in compliance," as defined in Section 163.3184(1)(b) F.S.; and,
5. In order to bring the Amendments into compliance, the City of Lake Wales may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 11th day of March 2008, at Tallahassee, Florida.



Mike McDaniel, Chief
Office of Comprehensive Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

EXHIBIT B
DCA v. THE CITY OF LAKE WALES
AND HUNT BROTHERS, INC. (INTERVENORS)

Settlement to Resolve Not-In-Compliance Finding:
DOAH Case No. 08-1611GM
Docket No. 08-1-NOI-5314-(A)-(1)-(N)

Settlement Condition: The City of Lake Wales agrees to undertake the following remedial actions in order to resolve the Department of Community Affairs' Not-In-Compliance finding for Amendment 08-1 (Docket No. 08-1-NOI-5314-(A)-(1)-(N)), involving changes to the Comprehensive Plan Future Land Use Map adopted by Ordinance Nos. D2007-09 and D2007-11, on January 15, 2008 by the City of Lakes Wales:

Compliance Issue: The compliance issues associated with the adopted land use changes pertained to the lack of data and analysis regarding the impact of the amendments on transportation facilities in the vicinity of the subject sites in order to demonstrate that there was adequate roadway capacity to accommodate the increased demand created by the amendment. The City has provided transportation data and analysis for the short the term (next five years) and the long term 2030. The analysis limits development for the next five years to the level indicated in Policy 2.03 below and it shows that adequate capacity exists within the next five years to accommodate that level of development.

Remedial Actions to address compliance issues pertaining to the adopted Future Land Use Map changes

The City of Lake Wales will take the following remedial actions within sixty (60) days of the execution of this Settlement Agreement:

1. Adopt a remedial amendment which incorporates into the Future Land Use element of the city's comprehensive plan, the following site-specific policies;

Policy 2.03: The level of development allowed on the Hunt Brothers property located along SR 60 shall be limited to the following:

- a. The 46-acre Hunt Brothers property cited in Ordinance No. 2007-11 and located at the intersection of SR 60 E. and Tangelo Street shall neither be developed in excess of 400,000 square feet nor a 0.2 floor area ratio; of this, no more than 230,000 square feet shall be developed by 2013.
- b. The 39.4-acre Hunt Brothers property (aka Packing Plant site) cited in Ordinance No. 2007-09 and located at the intersection of Hunt Brothers Road and Lilly Street shall be developed as a single-family residential development and shall not exceed a gross density of 3 dwelling units per acre. No more than 110 dwelling units shall be developed by 2013.

- c. The 24-acre Hunt Brothers property (aka Packing Plant site) cited in Ordinance No. 2007-09 and located south of the intersection of Hunt Brothers Road and Lilly Street shall be developed as Business Park Center uses with a floor area ratio no greater than 0.46.
- d. The 109-acre Hunt Brothers property (aka Packing Plant site) cited in Ordinance No. 2007-09 and located at the intersection of S 11th Street and Hunt Brothers Road shall be developed as industrial use with a floor area ratio no greater than 0.46.
- e. No more than 1,315,735 square feet of non-residential use shall be developed on both the 24-acre Business Park site and the 109-acre Industrial site by 2013.

Policy 2.04: The land use changes identified in Ordinance Number D2007-09 and D2007-11 associated with the Hunt Brothers property located along SR 60 are projected to have transportation impact by 2030 on the following roads within the City of Lake Wales: Tangelo Street, Hunt Brothers Road, Buck Moore road and State road 60, and the following improvements have been identified to be needed in order to accommodate the development during the 2030 planning horizon:

Tangelo Street: From SR 60 to Hunt Brothers Road – two lanes to be added;
Hunt Brothers road: From US 27 to SR 60 –Two lanes to be added;
Buck Moore Road: From SR 60 to Burns Road – two lanes to be added; and
SR 60: From SR 17 to US 27 - two lanes to be added.

If roadway failures occur to any of these segments after 2013, the City will not permit any additional development until the needed improvements have been programmed through the City's Five Year Schedule of Capital Improvements.

2. The remedial amendment shall include a revised Future Transportation Map or map series identifying the roads listed above as future needed improvements.
3. The transportation data and analysis as well as other information provided in the attached correspondence of November 11, 2009 shall be included with the remedial amendment to serve as the supporting data and analysis.