

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE VIZCAYANS, INC., et al.,

Consolidated Case Nos.

07-2498GM

07-2499GM

Petitioners,

vs.

CITY OF MIAMI,

Respondent,

and

TRG-MH VENTURE, LTD. and MERCY
HOSPITAL, INC.,

Intervenors.

**PETITIONER THE VIZCAYANS'S RESPONSE IN OPPOSITION
TO MOTION TO STAY PROCEEDINGS PENDING DCA
CONSIDERATION OF WHETHER AMENDMENT SATISFIES
REQUIREMENTS OF SECTION 163.3187(1)(C), FLORIDA STATUTES**

Once again, intervenor TRG-MH Venture, Ltd. ("TRG") seeks delay. No statute, rule, or case authorizes – much less requires – that this proceeding be stayed because Respondent the City of Miami ("City") has decided to transmit to the Department of Community Affairs ("DCA") all of the comprehensive plan amendments that the City has adopted as purported small-scale amendments under section 163.3187(1)(c), Florida Statutes. For the following reasons, the Motion to Stay Proceedings Pending DCA Consideration of Whether Amendment Satisfies Requirements of Section 163.3187(1)(c), Florida Statutes, filed by Intervenor TRG-MH Venture, Ltd. ("TRG"), should be denied:

1. When a local government in Florida processes an amendment to its adopted comprehensive plan as small-scale under the criteria in section 163.3187(1)(c), that local

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government is required to send a copy of the amendment to, among others, DCA. *See* § 163.3187(1)(c)(2)(b), Fla. Stat.

2. The City has admittedly failed to comply with this statutory requirement for the past three years.¹ After this failure was brought to the City's attention, it advised DCA that it was compiling all documentation concerning its small-scale comprehensive plan amendments and would forward them to DCA. *See* 7/3/07 Letter from City Manager Pedro Hernandez to DCA Plans Review Administrator Ray Eubanks, attached to Motion to Stay as Exhibit "A." This letter offers no reason for the City's failure to comply with the Growth Management Act and, further, makes no representation as to when it expects to remedy its non-compliance.

3. TRG asks for a stay of this proceeding "until such time as DCA has concluded whether the Amendment satisfies the statutorily-imposed requirements for a small-scale amendment." Motion to Stay at ¶5. According to TRG, if DCA determines the subject amendment is not small-scale, "the issue before this Court will be moot." *Id* at ¶6.

4. The Vizcayans certainly believe that the subject amendment is not small-scale and believe that DCA will eventually make that same determination. And the Vizcayans are heartened to see that the City is making a belated attempt to comply with Florida law. However, Florida's regulatory scheme does not require that DCA affirmatively conclude whether the Amendment satisfies the statutorily-imposed requirements for a small-scale development. *See* Fla. Admin. Code sec. 9J-11.015, which is entitled "Submittal Requirements for Adopted Amendments that Are Exempt from State and Regional Review" (emphasis added). Thus, TRG

¹ Ultimately, the City's effective admission that it did not send a copy of this Amendment to the DCA, as required by § 163.3187(1)(c)(2)(b), Fla. Stat., will provide basis enough for this tribunal to issue a recommended order that the City's actions with respect to this Amendment do not comply with the Growth Management Act.

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is effectively asking for an open-ended stay pending a determination that may never, in fact, be made.

5. Moreover, when the DCA eventually determines that the amendment was not properly characterized as small-scale, the next step would be for DCA to intervene in this proceeding if DCA feels intervention is appropriate. *See* § 163.3187(3)(a), Fla. Stat. If DCA decides to intervene, it could presumably advise this tribunal that it too believes the amendment is not small-scale.

6. It is, however, ultimately the job of this tribunal to listen to the evidence and make a recommendation about whether the amendment that is the subject of this petition satisfies the section 163.3187(1)(c) criteria for being small-scale. If the petitioners prevail and the amendment is found to be not in compliance, this tribunal will ultimately issue a recommended order to the Administration Commission for final order. *See* § 163.3187(3)(b)(1).

7. In short, that the City has finally decided to transmit its small-scale amendments to DCA does not mean DCA will take action that obviates the need for this tribunal to decide whether the subject comprehensive plan amendment is small-scale. There is, therefore, no reason to stay this proceeding due to the City's promised transmittal, which will occur at some unspecified time in the future.

8. Last, it is important to remember that a final order on whether the amendment qualifies as a small-scale amendment does not fully dispose of the Petitioners' pending claims regarding the other flaws in connection with the City's attempted adoption of the Amendment, in particular that the Amendment: (i) violated numerous provisions of the Growth Management Act in addition to those relating to the small scale/large scale issues, (ii) is inconsistent with numerous provisions of the State Comprehensive Plan, (iii) is inconsistent with the County's

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Comprehensive Plan, (iv) is inconsistent with the City's Comprehensive Plans, and (v) violated the vested DRI for Mercy Hospital. Therefore, the City's decision to belatedly comply with one procedural provision of the Growth Management Act should not, and does not foreclose Petitioners' right to have this tribunal determine whether the City's substantive decision in this matter complies with the law.

WHEREFORE, Petitioner The Vizcayans, Inc. respectfully requests that this tribunal deny the Motion to Stay Proceedings Pending DCA Consideration of Whether Amendment Satisfies Requirements of Section 163.3187(1)(c), Florida Statutes, filed by Intervenor TRG-MH Venture, Ltd.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by facsimile and U.S. mail to the following on this 17th day of July, 2007:

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