

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEERINA FARRELL, ARIEL HORNER,
ADELE SIMONS, MARJORIE HOLT,
RONALD BROOKE, KELLY SEMRAD, AND
CORNER LAKES ESTATES HOMEOWNERS
ASSOCIATION, INC.,

Petitioners,

vs.

Case No. 16-4556GM

ORANGE COUNTY,

Respondent,

and

BANKSVILLE OF FLORIDA, INC.;
CHCG LAND SERVICES, LLC; ROLLING
R. RANCH, LTD.; MARY RYBOLT
LAMAR, INDIVIDUALLY; AND MARY
RYBOLT LAMAR, AS TRUSTE OF THE
ELOISE A. RYBOLT REVOCABLE
TRUST,

Intervenors.

_____ /

RECOMMENDED ORDER

A duly-noticed final hearing was held in this matter in
Orlando, Florida, on March 27 through 29, 2017, before Suzanne
Van Wyk, an Administrative Law Judge assigned by the Division of
Administrative Hearings.

STATEMENT OF THE ISSUE

Whether Orange County Comprehensive Plan Amendments 2015-2-P-FLUE-1 and 2015-2-A-5-1, adopted by Ordinance 2016-17 on July 12, 2016 (the Plan Amendments), are "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes (2016).^{1/}

PRELIMINARY STATEMENT

On July 12, 2016, Orange County (the County) adopted the Plan Amendments, which establish a new future land use category, Lake Pickett, in the County's 2010-2030 Comprehensive Plan (Comprehensive Plan), and amend the County's Future Land Use Map (FLUM) to designate 1,237 acres within the new category.

On August 11, 2016, Petitioners filed a Petition with the Division of Administrative Hearings (Division) challenging the Plan Amendments as internally inconsistent with the Comprehensive Plan, not based on relevant and appropriate data, and not providing meaningful and predictable standards for the use and development of land and meaningful guidelines for more detailed land development regulations, in violation of the Community Planning Act, chapter 163, Part II, Florida Statutes.

The case was originally assigned to Administrative Law Judge Bram Canter, and was transferred to the undersigned on August 18, 2016. On August 25, 2016, the undersigned granted Unopposed Petitions to Intervene filed by Banksville of Florida,

issue does not ipso facto make it an meaningful and predictable standards issue.

276. The Petitioners did not prove that the Plan Amendments fail to provide meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development regulations.

CONCLUSIONS OF LAW

277. The Division of Administrative Hearings has jurisdiction over the subject matter and parties hereto pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes.

278. To have standing to challenge or support a plan amendment, a person must be an "affected person," as defined in section 163.3184(1)(a).

279. Both the Individual Petitioners and Petitioner Corner Lakes, are affected persons within the meaning of the statute.

280. Intervenors Banksville, CHCG, and the Rybolt Intervenors, are affected persons with standing to intervene in this proceeding pursuant to 163.3184(1)(a).

281. "In compliance" means "consistent with the requirements of §§ 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in

designated areas of critical state concern and with part III of chapter 369, where applicable." § 163.3184(1)(b), Fla. Stat.

282. The standard of proof to establish a finding of fact is preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

283. The "fairly debatable" standard, which provides deference to the local government's disputed decision, applies to any challenge filed by an affected person. Therefore, Petitioners bear the burden of proving beyond fair debate that the challenged Plan Amendments are not in compliance. This means that "if reasonable persons could differ as to its propriety," a plan amendment must be upheld. Martin Cnty. v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997).

284. The fairly debatable standard is not insurmountable. Where a local government has established in its comprehensive plan a prohibition, and a plan amendment authorizes development directly contrary thereto, there is no argument that the plan amendment is internally consistent.

Internal Inconsistency

285. Based on the foregoing Findings of Fact, Petitioners proved beyond fair debate that the Plan Amendments are internally inconsistent with FLUE Goal 1, Objective 1.1, Policy 1.1.1, Objective 1.2, Policies 1.2.1 and 1.2.2; Goal 2; Goal 6, Objective 6.1, and Policies 6.1.1, 6.1.2, and 6.1.3. The County

has established a clear policy of directing urban development to the USA and allowing only low density future residential development in the RSA. The Plan Amendments direct urban development to the RSA, contrary to the County's established desired development pattern. While the County has established exceptions to the policy of limiting future development in the RSA, the Plan Amendments do not meet any of the established exceptions.

286. Petitioners did not prove, beyond fair debate, internal inconsistency between the Plan Amendments and any of the other goals, objectives, and policies cited by Petitioners.

Data and Analysis

287. Section 163.3177(1)(f) requires plan amendments to be "based upon relevant and appropriate data and analysis" by the local government, and includes "surveys, studies, community goals and vision, and other data available at the time of adoption."

288. To be based on data "means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan amendment." § 163.3177(1)(f), Fla. Stat.

289. Based upon the foregoing Findings of Fact, the Petitioners did not prove beyond fair debate that the Plan Amendments do not react appropriately to data regarding the

natural resources present on the site of the LPSA or in the adjoining ESCA, to the extent required during the comprehensive plan amendment process.

Meaningful and Predictable Standards

290. Section 163.3177(1) requires the Comprehensive Plan to "establish meaningful and predictable standards for the use and development of land[.]" The Farrell Petitioners did not prove beyond fair debate that the use of average densities in transect zones rendered the Plan Amendment devoid of meaningful and predictable standards. Nor did Petitioner Brooke prove that the internal inconsistencies between the Plan Amendments and specified portions of the Comprehensive Plan render the Plan Amendments devoid of meaningful and predictable standards for the use and development of land.

Conclusion

291. For the reasons stated above, the Petitioner has proven beyond fair debate that the Plan Amendments are not in compliance with the specified provisions of chapter 163, Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Administration Commission enter a final order determining that Orange County Comprehensive Plan Amendments 2015-2-P-FLUE-1 and 2015-2-A-5-1, adopted by

Ordinance 2016-17 on July 12, 2016, are not "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes.

DONE AND ENTERED this 11th day of August, 2017, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of August, 2017.

ENDNOTES

^{1/} Except as otherwise provided herein, all references to the Florida Statutes are to the 2016 version.

^{2/} FLUE Policy 6.2.1 provides that "within 18 months, Orange County shall complete a study to determine whether the existing Rural Settlements should be expanded." The last amendment to this policy was made in June 2010. The record contains no evidence that the rural settlement boundaries have been expanded since 2010.

^{3/} The Individual Petitioners included FLUE Policy 1.2.6 on the list of policies with which the Plan Amendments are alleged to be inconsistent. The Comprehensive Plan provides that Policy 1.2.6 was deleted by Ordinance 2013-11 in May 2013, and directs the reader to FLUE Policy 1.3.1A. The Individual Petitioners did challenge the Plan Amendments as internally inconsistent with Policy 1.3.1, which is addressed elsewhere herein.