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STATEMENT OF THE ISSUE

The issues in this case are whether the comprehensive plan adopted by Hernando County, Florida (County) is "in compliance" pursuant to Chapter 163, Part II, Florida Statutes, and Chapter 9J- 5, Florida Administrative Code; and, whether the County gave adequate notice of the plan's amendment as required by Section 163.3181 and Section 163.3184, Florida Statutes.

PRELIMINARY STATEMENT

The County submitted a proposed comprehensive plan to the Department of Community Affairs (Department) for review. On July 28, 1989, after reviewing the plan, the Department issued its Notice of Intent to find the plan not in compliance based on its Statement of Intent containing the finding that the designation of the future commercial uses along the State Highway System, U.S. 19, U.S. 41 and S.R. 50, threatened accepted traffic levels of service and encouraged strip commercial development and leapfrog urban development. Additionally, the Statement of Intent recommended remedial actions including limiting the amount of commercial development on U.S. 19, U.S. 41 and S.R. 50 and reducing the amount of residential development to be consistent with the data and analysis.

The County and the Department executed a Stipulated Settlement Agreement, effective March 12, 1990, which described remedial actions necessary to bring the Hernando County Comprehensive Plan into compliance with the requirements of Chapter 163, Part II, Florida Statutes, and Chapter 9J-5, Florida Administrative Code.

These remedial actions required removal from the Future Land Use Map (FLUM) of strip commercial land use except for the strip commercial on U.S. 19 between the Pasco County Line and S.R. 50, and the strip commercial on S.R. 50 between Oak Hill Hospital Drive and the southern extension of C.R. 491. The remedial actions also required the use of nodal commercial designations and infilling of existing commercial areas.

On November 14, 1990, the Hernando County Board of County Commissioners, by Ordinance No. 90-21, adopted amendments to the plan in response to the parties' Stipulated Settlement Agreement described above. On January 5, 1991, the Department issued its Notice of Intent to find the plan in compliance.

On January 25, 1991, Petitioners filed their petitions with the Department challenging the compliance determination and requesting formal administrative proceedings. The petitions generally alleged that the Hernando County plan

amendments were inconsistent with requirements of Sections 163.3177 and 163.3184(1)(b), Florida Statutes, the State Comprehensive Plan, the Withlacoochee Regional Policy Plan, Rule Chapter 9J-5, Florida Administrative Code; that Petitioners' properties in Hernando County should be returned to their former zoning and land use designations; and that Petitioners did not receive adequate notice of the County's proposed land use changes.

At the final hearing, Counsel for Petitioner Hamm called four witnesses and introduced into evidence 25 exhibits. Petitioners Bicket called one witness. The County called two witnesses and introduced into evidence six exhibits. The Department called two witnesses and introduced into evidence 19 exhibits. A transcript of the final hearing was filed with the Division of Administrative Hearings on October 7, 1992. In accordance with provisions of Rule 60Q-2.031, Florida Administrative Code, the parties, by request and agreement to a deadline for filing proposed recommended orders more than 10 days after the filing of the transcript, waived provisions of Rule 28-5.402, Florida Administrative Code.

Proposed findings of fact submitted by the parties are addressed in the appendix to this recommended order.

FINDINGS OF FACT

I. Parties

1. The Department is the state land planning agency charged with the responsibility of reviewing plans and plan amendments pursuant to Chapter 163, Part II, Florida Statutes, also known as The Local Government Comprehensive Planning and Land Development Regulation Act (Act).

2. Petitioner Loren E. Hamm and Petitioners Dorothy K. Bicket as Trustee for the Dorothy K. Bicket Trust, M.M. Bicket as Trustee for the M.M. Bicket Trust, and John Hiram Bicket as Trustee for the M.M. and Dorothy K. Bicket Trust, all own properties within the boundaries of the County that were affected by the remedial plan amendments. Petitioner Hamm submitted oral objections concerning the plan amendment during the review and adoption proceedings. Petitioners Bicket did not submit oral or written objections concerning the plan amendment during that process. All Petitioners have alleged inadequate notice of the remedial amendments and the consequential proposed land use changes.

3. The County is a local government required to adopt a revised comprehensive plan pursuant to Sections 163.3164(12) and 163.3167, Florida Statutes. On June 7, 1989, the County adopted a local comprehensive plan with a year 2010 planning horizon.

4. For purposes of this recommended order, the findings and conclusions discussed herein address specifically the property owned by Petitioner Loren E. Hamm.

II. Background

5. The County is located in rural central Florida. The County encompasses approximately 312,000 acres. The County is bounded on the north by Citrus County, on the east by Sumter County, on the south by Pasco County, and on the west by the Gulf of Mexico. The county seat is the City of Brooksville.

6. There are two arterial roadways at the heart of the issue in this proceeding. They are U.S. 19, a 4-lane divided highway running north and south in western Hernando County and S.R. 50 a state highway running east and west in central southern Hernando County. S.R. 50 features existing strip commercial development.

7. Petitioner Hamm owns approximately 431 acres of undeveloped land along S.R. 50 due west of the Oak Hill Hospital and due east of the intersection of S.R. 50 and U.S. 19 at the City of Weeki Wachee.

8. Petitioner Hamm's property is a vacant parcel of sandy soil, partially vegetated by pine trees and scrub oaks and dotted by small lakes or "sink holes". Mr. Hamm has a forest green belt tax exemption on his property.

9. According to the 1989 Hernando County Comprehensive Plan, the land use classification for Mr. Hamm's parcel was a combination of residential, commercial and light industrial. Pursuant to the remedial amendments, Mr. Hamm's property was designated on the FLUM as a combination of residential and commercial use with a designated commercial node overlapping Mr. Hamm's property.

10. At the hearing, Mr. Hamm was not aware of the acreage of his parcel which had been designated as a partial commercial node on the FLUM adopted on November 14, 1990, nor was he aware of the amount of commercial designation available for his property pursuant to the prior FLUM adopted June 7, 1989.

11. Under the 1989 plan Mr. Hamm may have been eligible for a category of development called urban buildup which was a mix of urban land uses. At that time, he could have potentially developed 80 to 90 acres of the subject land as commercial development.

12. Mr. Hamm could have developed his property under a commercial land use designation pursuant to the June, 1989, comprehensive plan; similarly, he can also develop a portion of his property for commercial use under the November, 1990 plan amendments, depending on the extent to which the commercial node designated on the FLUM falls on Mr. Hamm's property.

13. Approximately 47 acres of the commercial node falls on Mr. Hamm's property and may be developed specifically as commercial land use. He may also develop office/professional uses in addition to the 47 acres of the general commercial, roughly an additional 50 acres.

14. Utilization of the commercial node on Mr. Hamm's property may afford up to 90 acres available for commercial development under the November, 1990 comprehensive plan amendments, if development pursuant to the office/professional designation is included. Previously, Mr. Hamm was able to develop an area 1000 feet deep across the front of his property amounting to approximately 100 acres under the June, 1989 comprehensive plan.

III. The Issue of Adequate Notice

15. Hernando County undertook a fairly extensive citizen's participation program for development of its comprehensive plan and appointed five task forces to give citizen input on various aspects of the plan over a period of several years. Hundreds of meetings involving the task force were held, which meetings were open to the public and in which the public participated.

16. The County duly noticed its public hearings to consider and adopt the remedial amendments by an advertisement published in a newspaper of general paid circulation in the County and of general interest and readership in the community, not one of limited subject matter. The advertisement was a one quarter page ad in a standard size. The advertisement did not appear in the portion of the newspaper where legal notices and classified advertisements appear.

17. The County advertised its notices of public hearings in the Brooksville Sun Journal, a local newspaper of general circulation in the County that it had used for such advertisements for a period of fifteen to seventeen years. The newspaper has since gone out of business. No affected person was provided individual notice of Plan workshops and hearings.

18. The County advertised notice of the local planning agency meeting held May 10, 1990, the transmittal hearing by the Board of County Commissioners and the public adoption hearing of the Board of County Commissioners in the Brooksville Sun Journal.

19. Notably, approximately 1200 notices of zoning hearings have been published in the Sun Journal. None of these notices have been previously determined to be inadequate.

20. Mr. Hamm appeared at, participated in and addressed the Board of County Commissioners at the duly noticed public hearing held November 14, 1990. Representatives of Mr. Hamm were also present at the public hearing and were afforded the opportunity to address the Board of County Commissioners regarding the remedial amendments and Mr. Hamm's property in relation thereto. Representatives of Mr. Hamm present at the hearing included an attorney, a real estate appraiser and a land use consultant.

21. At the public hearing of the Board of County Commissioners at which the remedial amendments were considered, no new, independent, or additional data and analysis regarding the land use classification from Mr. Hamm's property was presented for consideration.

IV. Land Use Compliance Issues

22. The following four issues form the basis of Petitioners' claims that the Hernando County Comprehensive Plan is not in compliance:

- a) Failure to coordinate future land uses with available facilities and services thereby encouraging urban sprawl;
- b) Promotion of strip commercial development along State Highway System;
- c) The quantity and quality of data and analysis relative to roadway impacts expected from the strip commercial land along S.R. 50 near Oak Hill Hospital and methodology utilized by the County; and
- d) Quantity and quality of data analysis relative to the number and location of the commercial nodes near U.S. 19 and S.R. 50 as reflected in the commercial nodes maps and the methodology utilized by the County.

e) The manner and extent to which Mr. Hamm can develop his property.

23. In the FLUE, the Hernando County Comprehensive Plan contains the following goals, objectives and policies relative to the designation of commercial land use on the FLUM: 1/

POLICIES

OBJECTIVE E: TO PROVIDE FOR MODERATE TO HIGH DENSITY RESIDENTIAL DEVELOPMENT IN SUITABLE AREAS.

POLICY: 1 Establish a Residential Land Use Category where the land uses allowed are: Single family residential densities up to 5.4 units/acre, resort residential, and ancillary land uses such as recreation, churches, and community centers. Land uses which can be located in this category with performance standards being met include multi-family housing up to 12.5 units/acre, rural residential, neighborhood commercial, commercial extending from commercial nodes with a function frontage road, unless it is determined that wetlands or existing development make frontage road extension unfeasible, offices and professional, schools, hospital and minor public facilities.

OBJECTIVE K: PROVIDE FOR THE DEVELOPMENT OF HIGH QUALITY COMMERCIAL AREAS TO MEET THE CURRENT AND PROJECTED NEEDS OF HERNANDO COUNTY RESIDENTS WHILE ENSURING AN ORDERLY AND EFFICIENT PATTERN OF LAND USES AND PROTECTING THE COUNTY'S TRANSPORTATION NETWORK.

POLICY 1: Establish a Commercial Land Use Category, in which land uses such as commercial, recreation, office and professional, minor public facilities, and minor institutional are allowed. Residential units may be allowed.

POLICY 2: Prior to 1991, the County shall amend its Land Development Regulations to include specific criteria for neighborhood commercial, general commercial, community commercial, regional commercial, and any subcategories thereof, addressing permitted uses, bulk regulations, buffer requirements, performance standards, signage, aesthetics, parking requirements and special exceptions or other mechanisms to allow flexibility.

POLICY 3: New commercial development shall be initiated within commercial nodes, as indicated on the adopted Future Land Use Map Series, except for Specialty Commercial, Neighborhood Commercial, and appropriate infill areas.

POLICY 4: The Landscape Ordinance shall require the buffering of the negative visual impacts of commercial development through the use of landscaping, screening, regulation of signs, planting of trees and where feasible, the preservation of natural vegetation.

POLICY 5: Where commercial development is proximate to residential uses, ordinances and land use approval conditions shall require that anticipated negative impacts shall be mitigated to the extent practicable by the commercial development, including noise, glare, dust, noxious fumes, odors, light, increased traffic, and visual discontinuity.

POLICY 6: The Land Development Regulations shall be written to encourage planned development zoning along arterial roads or in multiple land use

developments to ensure compatible land uses and maximize coordination of facilities and access.

POLICY 7: The County shall establish standards to promote the integration of pedestrian traffic within and between commercial developments and adjacent residential areas.

POLICY 8: To the extent feasible, higher intensity commercial uses will be buffered from residential areas by lower intensity commercial, office and professional, multi-family or other appropriate land uses. These "steps or intensity" will be criteria within land use approval process.

POLICY 9: In areas where existing residential usage is expected to transition into commercial, the initial commercial land uses approved shall generally be of lower intensity.

COMMERCIAL NODES

OBJECTIVE L: HERNANDO COUNTY WILL MANAGE AND DIRECT COMMERCIAL DEVELOPMENT THROUGH THE DESIGNATION OF COMMERCIAL NODES.

POLICY 1: Commercial development shall be managed through a classification into categories of commercial node, established primarily by locational factors

POLICY 2: Land Use Regulations shall be adopted which further describe land uses allowed in each commercial node classification, and shall include any sub-sets of zoning districts, performance standards, exceptions or other regulations reasonably required to manage commercial development activity.

POLICY 3: Commercial nodes shall be classified as neighborhood commercial, community commercial, general commercial, and regional commercial, with the following minimum locational criteria:

- a. Neighborhood Commercial Nodes
 1. May be located in the Residential or Rural Future Land Use categories, but because of size will not require mapping on the Future Land Use Map Series;
 2. Will have a maximum node size of 5 acres;
 3. Will not be located in Conservation areas or environmentally sensitive areas;
 4. Will be located on collector or arterial roads except where proposed as part of an integrated, mixed-use planned unit development;
 5. Will not degrade the proper functioning of the adjacent roads below the established levels of service;
 6. Will be proximate to population areas to support the proposed use;
 7. Will not compromise the integrity of residential areas.

b. Community Commercial Nodes

1. Will be located in areas designated on the Future Land Use Map Series as locations appropriate for nodal commercial development;
2. Will be located proximate to the intersection of two roadways of a status of collector road or greater;
3. Full median cuts will generally not be allowed any closer than 660 feet from the intersection to maintain the proper functioning of the intersection;
4. Will be located on the fringe, not the interior, of the residential areas;
5. May be exempt from the criteria of 1, 2, and 4, if proposed as part of or proximate to an integrated, mixed-use planned development project;
6. Will not compromise the integrity of the residential areas;
7. Will generally range from 40-60 acres in size.

c. General Commercial Nodes

1. Will be located in areas designated on the Future Land Use Map Series as appropriate for nodal development;
2. Will be located proximate to the intersection of an arterial highway and a second road of at least collector status;
3. Full median cuts will generally not be any closer than 1,320 feet on arterials and 660 feet on collectors for the intersection to maintain the proper functioning of the intersection;
4. Will generally range from 50 to 100 acres in size;
5. Will be located within three to five miles of population areas to support the size and intensity of the development proposed;
6. Will be of a design which does not compromise the integrity of adjacent uses of close proximity;
7. May be exempted from the criteria of 1 and 2, if proposed as part of or proximate to an integrated, mixed-use planned development project.

d. Regional Commercial Nodes

1. Will be located proximate to the intersection of two arterial roadways;
2. Will have a minimum node size of 80 acres;
3. Will be of a design which does not compromise the integrity of adjacent uses of close proximity;

4. Full median cuts will generally not be any closer than 1,320 feet from the intersection to maintain the proper functioning of the intersection.

POLICY 4: Development in commercial nodes shall provide for extension of the County's frontage road network on arterial roadways.

POLICY 5: In order to encourage compact commercial development and maintain the viability of adjacent roadways, commercial development can only extend outward from commercial nodes where there is a frontage road connected to the commercial node, unless it is determined that wetlands or existing development make frontage road extension unfeasible.

POLICY 6: Commercial development in nodes will be encouraged to utilize unified surface drainage plans, unified landscaping plans, and unified signage criteria.

POLICY 7: Prior to the issuance of building permits within the commercial nodes on U.S. 19, north of S.R. 50, an access management plan will be developed.

POLICY 8: Media cuts for commercial nodes on U.S. 19 north of S.R. 50 will be limited to one per quadrant unless it can be demonstrated to the Florida Department of Transportation (FDOT) that additional cuts will result in an improved traffic flow.

POLICY 9: The access management plan will provide for interconnection between the commercial activities and residential areas.

STRIP COMMERCIAL DEVELOPMENT

OBJECTIVE N: LIMIT AND MANAGE STRIP COMMERCIAL AND INFILL COMMERCIAL AREAS SO AS TO IMPROVE TRAFFIC CIRCULATION AND VISUAL QUALITY.

POLICY 1: Strip Commercial will only be allowed along commercial corridors which have significant existing commercial development, remaining parcels are generally zoned commercial and commercial development is expected to continue.

POLICY 2: Expansion of the existing strip commercial areas shall not be allowed except for appropriate infill commercial development.

POLICY 3: The County shall not permit the creation of any new strip commercial areas during the planning period.

POLICY 4: Infill commercial development can occur only within the strip commercial areas as described in Policy 1.

POLICY 5: Where practicable, the County shall encourage the redevelopment of existing strip commercial areas through the designation of commercial nodes in locations consistent with the criteria as found in Objective L.

POLICY 6: The County shall encourage the redevelopment of older strip commercial areas in locations consistent with the Future Land Use Map.

POLICY 7: Regulations shall be prepared to address the special needs of these corridors such as, additional setbacks, buffers, landscaping requirements, access limitations, and frontage roads.

* * *

24. In its compliance review, the Department considered the amount of commercial land use along the State Highway System. The Department's analysis centered on the fact that the entire length of U.S. 19 and S.R. 50 had been designated as a commercial land use in the 1989 plan and would negatively impact the level of service on a State Highway System, a primary concern of the Department.

25. Because of the relationship of the commercial and residential land uses along and in proximity to the State Highway System, the Department concluded that the commercial designations proposed on the June 1989 FLUM would have adverse impacts on the State Highway System particularly along U.S. 19, S.R. 50 and U.S. 98. The "ORC Report" dated September 21, 1990, identifies the Department's concerns for the commercial land use designations on the FLUM.

26. The County responded to the Department's ORC Report and attempted to reduce the allocation of commercial in the County, particularly along U.S. 19, by reducing the amount of commercial nodes from the proposed land use map to the adopted land use map. The actual placement of the nodes on the adopted map was a local decision by the Board of County Commissioners.

V. Strip vs. Node Commercial development

27. The existing plan allows expansion and extension of commercial nodes.

28. The residential land use category in the plan amendment allows for professional office use in the residential land use category.

29. A commercial node is a center of commercial development generally located at major intersections. It is a concentrated interrelated commercial development pattern and should be designed to serve a much larger area than just the node itself.

30. Commercial strip development involves a series of commercial developments strung along the highway system. It is basically a linear type of development activity that is frequently not well interrelated to other surrounding land uses.

31. Planners will differ as to which is the preferable approach for commercial land use designation, a commercial node or a commercial strip.

32. Strip commercial development is less compact, less interrelated, less coordinated. It can be more difficult to implement access control mechanisms and more difficult to implement steady control.

33. The County selected the use of commercial nodes on U.S. 19 north of the City of Weeki Wachee to serve residential development shown on the Future Land Use Map. A number of the nodes correspond with historic developments that are in that area as well as several developments that were platted in the early 1970's. A couple of the nodes correspond with major intersections with U.S. 19. Predominately, either intersection criteria or existing historic development approvals were the criteria used to select the placement of the commercial nodes along U.S. 19.

34. Appropriate methodologies were used in selecting the placement of the commercial nodes along U.S. 19. Commercial nodes were chosen by the County, as

opposed to linear strip commercial land use designations in the vicinity of the intersection of S.R. 50 and U.S. 19 in order to reduce the amount of commercial development, specifically strip commercial development. The County elected to let existing strip commercial development remain as strip commercial, with opportunities for infill, and in other areas the County used nodes for its commercial development activities, since nodes give a more compact development pattern.

35. Strip commercial can result in "bad" commercial areas. These commercial areas have numerous access points onto a road and inhibit the flow of traffic, possibly resulting in increased accidents and reduced transportation time from one point to another. Strip commercial development in these instances is not planned and is not appropriately related to the roadway facility.

36. Strip commercial development is also a contributor to urban sprawl. The use of the commercial nodes along S.R. 50 and U.S. 19, as reflected in the 1990 Plan Amendment, help to reduce concerns regarding promotion of urban sprawl.

37. The half node of commercial designated in the area of Mr. Hamm's property can be developed in a manner that is functionally related to the Oak Hill Hospital which is nearby.

38. No new or independent data and analysis was offered at the hearing to support a designation of commercial land uses along S.R. 50 or U.S. 19 preferable to that designated by the County in its comprehensive plan amendments, nor was any such data and analysis provided to show that the County's commercial land use designation in this area is not in compliance or otherwise unsupported.

39. Nodal commercial development is generally a good concept, provided the location of those nodes make planning sense versus the use of infill development of strip commercial areas. In that regard, a distance of 2.3 miles (approximate distance from the northerly end of the strip commercial designation on U.S. 19 and the westerly edge of the strip commercial designation along S.R. 50) is a significant difference or gap such that extension of strip commercial development should not be classified as infill development.

40. The total amount of commercial land use in the County (consisting of strip commercial, the opportunity for infill plus the assignment of commercial nodes) meets the needs for commercial land use for the projected population of the County within the planning time frame.

VI. Infill

41. An important consideration in the location of strip commercial development for determining whether a FLUM complies with Rule 9J-5, Florida Administrative Code, is whether the commercial development as designated is existing commercial development and whether there are opportunities for infill.

42. The FLUM adopted by the County allows infill of existing strip commercial development along S.R. 50 between C.R. 491 and U.S. 19 and along S.R. 50 south of the City of Weeki Wachee.

43. The opportunity for infill of the existing strip commercial area along S.R. 50 in the vicinity of Oak Hill Hospital is significant.

44. The area of existing strip commercial development to the east of Oak Hill Hospital along S.R. 50 offers anywhere from 50 to 80 percent commercial infill development.

VII. Vesting/Nodes Along U.S. 19

45. The County anticipates that the U.S. 19 corridor will continue to develop as it has to the south through the planning horizon of year 2010. There are a number of projects anticipated in the north U.S. 19 area and the County's analysis of population growth indicates that there will be growth in that area. Additionally, there are commitments to infrastructure and a subregional sewer plant site shown in the area.

46. The estimated 2010 population for the area north along U.S. 19 is approximately 40,000.

47. The placement of the nodes along U.S. 19 was based upon at least one of the following four criteria: construction had commenced and is continuing in good faith; projects were DRI vested under Chapter 380, Florida Statutes; common law vesting; or locational criteria as prescribed in the Hernando County Plan Amendments.

48. It is good planning practice for planners to evaluate vested rights along U.S. 19 in determining the placement of commercial nodes.

49. It is an appropriate planning practice to locate commercial nodes where there exist platted subdivisions. It is a legitimate planning device for a county to direct future development to existing platted subdivisions as opposed to creating new platted subdivisions.

50. The historical development and vested status of the properties were considered by the County in the placement of nodes along U.S. 19.

51. The County recognized certain binding letters as part of the information it used in compiling and adopting the comprehensive plan amendments and the placement of commercial nodes along U.S. 19.

52. Planned infrastructure and public services are available within the 2010 horizon to support the commercial nodes placed along U.S. 19, including the four laning of U.S. 19 arterial, two subregional sewer plants, and waterlines proposed along U.S. 19 to serve development activities.

VIII. Protecting the Integrity of the State Highway System

53. Section 187.201(20), Florida Statutes sets forth the transportation goal of the State Comprehensive Plan and requires that:

Florida shall direct future transportation improvements to aid in the management of growth and shall have a state transportation system that integrates highway or mass transit and other transportation modes.

54. Applicable policies of that goal are set forth in Section 187.201(20)(b), Florida Statutes, and read as follows:

Policy 2. To coordinate transportation investments in major travel corridors to enhance system efficiency and minimize adverse environmental impacts.

Policy 3. To promote the comprehensive transportation planning process which coordinates state, regional, and local transportation plans.

Policy 9. To ensure that the transportation system provides Florida citizens and visitors with timely and efficient access to services, jobs, markets, and attractions.

Policy 13. Coordinate transportation improvements of the state, local, and regional plans.

55. The main purpose of the state highway system is mobility: the timely and safe transportation of people and goods over the roads in an efficient and cost effective manner.

56. Strip commercial adversely affects the operation of the mobility factor on the state highway system.

57. Rule Chapters 14-96 and 14-97, Florida Administrative Code, adopted by the Florida Department of Transportation, regulate the spacing of access points, driveways, and median cuts in order to assist the mobility of people and goods on the state highway system. Development in a linear or strip commercial fashion is counter productive to that effort and is not as efficient or cost effective as the use of commercial nodes along the state highway system.

58. The integrity of the state highway system can be protected through local government comprehensive plans which limit strip commercial development. Linear strip commercial development causes more trips on the highway system and at some point requires roadway widening and increased traffic signalization. Commercial node development allows better system control and management.

59. The over-commercialization of land uses along the state highway system has the potential to adversely or negatively impact the level of services provided by state roads. Alternatively, commercial nodes have less of an adverse impact because the node concept concentrates commercial development in an area where planning controls can be used to mitigate adverse impacts through methods such as limited curb cuts or frontage roads.

60. Generally, effective access management programs help to limit strip sprawl development patterns, maintain the through-carrying capacity of arterial roadways, and enhance the preservation of rural scenic values as development occurs. Curb cuts and access points can be minimized by requiring development to utilize parallel access roads, share existing or new access points, and construct local road networks that provide alternatives to the use of arterial roads. It is essential when employing this technique that the plan and implementing land development regulations require new subdivisions, planned unit developments, and like development to cluster commercial development sites in nodes and to connect their internal roadways to existing local networks so that a grid of alternative travel routes eventually results.

IX. Adequate Data and Analysis

61. The data and analysis to support the plan amendments include the following:

The Hernando County Future Land Use Map designates segments of U.S. 19 and S.R. 50 for continued commercial strip development. These two sections are located between the Pasco/Hernando County Line and the southern boundary of Weeki Wachee along U.S. 19, and between Oak Hill Hospital Drive and the southern extension of C.R. 491 along S.R. 50.

The 2010 network and socio-economic data residing in the Hernando County FSUTMS Transportation Model was utilized to analyze future conditions. The commercial service and total data (the ZDATA2 file) was modified to reflect commercial build-out conditions along U.S. 19 and S.R. 50. The commercial and service data in the Transportation Analysis Zones (TAZ's) along the two corridors were factored up to appropriately represent a 100% build- out scenario.

The June 1990 Compliance Agreement between Hernando County and the Department sets forth a level of service (LOS) standard "C" for non backlogged facilities. It is assumed that S.R. 50 and U.S. 19 will not be in a backlogged condition at the end of the planning period.

Only two links are projected to exceed LOS "C" urban, one on U.S. 19 just south of the City of Weeki Wachee, and one link of S.R. 50 between the future North South (Suncoast) Corridor and Wiscon Road. In these cases LOS "C" was exceeded by 208 and 251 vehicles/hour respectively. However, exceeding the standard by 4 or 5% is not significant since this amount is well within the tolerance error of the model. That is to say, the error margin of model exceeds the estimated excess volume.

Since all of the other affected links maintained service levels of "C" or better, with most links being in the "A" category, it is assumed that the commercial build-out of the subject areas will not adversely impact service volume levels by the year 2010, the end of the current planning period.

State Facility Backlog Analysis.

The State facilities designated as backlogged in the Traffic Circulation Element of the Hernando County Comprehensive Plan include sections of U.S. 19, S.R. 50, and U.S. 41. Daily and peak hour traffic counts were taken by Hernando County staff on these facilities in the Autumn of 1990. The results of this effort are recorded in Table 3A.

As was stated in the previous section, State maintained roads were to be analyzed on the basis of peak hour analysis. The peak hour level of service standard is LOS C. rural. U.S. 41 is in a backlogged condition from Cortez Boulevard (S.R. 50) to Ayers Road. State Road 50 is backlogged from U.S. 19 to Cortez Boulevard to I-75. Jefferson Street (S.R. 50A) is backlogged from S.R. 50 to west boundary of the City of Brooksville to Cortez Boulevard. U.S. 19 south of S.R. 5 to Spring Hill Drive is in a backlogged status in the peak hour given the statistical confidence level of the counts taken. Additionally the segment exceeds the daily LOS threshold standard.

62. Data and analysis to support a comprehensive plan is information about the County that is utilized in the development of the county's plan. Examples include demographic information, population projections, growth trends, and existing land use patterns.

63. Part of the data and analysis supporting the Hernando County Comprehensive Plan was developed through the public participation process. Further, the County through its consultants and its own planning staff furthered that effort with supporting documentation for both the original 1989 plan and the 1990 amendments.

64. The plan is adequately supported by data and analysis gathered by professionally accepted methodology. Also, the plan does not promote urban sprawl.

X. Ultimate Findings

65. The November 14, 1990 amendments to the Future Land Use Map reduced strip commercial development along State Road 50, east and west of Brooksville on State Road 50 in the vicinity of U.S. 19 and U.S. 41 south of Brooksville and on U.S. 19 north of S.R. 50. Additionally, the amendment reduced the amount of residential land use on a county-wide basis.

66. The County reduced the number of commercial nodes along U.S. 19 in conformity to the data and analysis.

67. The Land Use Element contained in the 1990 amendments, including the Future Land Use Map series was created, established, and adopted pursuant to generally accepted planning principles.

68. The goals, objectives, and policies set forth in the Comprehensive Plan Amendment coupled with the data and analysis support the Future Land Use Map series of the adopted amendments.

69. The Plan as a whole serves to discourage the proliferation of urban sprawl.

70. The proof presented fails to show that the 1990 Amendments to the County's Comprehensive Plan are not in compliance with provisions of Chapter 163, Part II, Florida Statutes, the Withlacoochee Regional Policy Plan, the State Comprehensive Plan set forth in Section 187.201, Florida Statutes, and provisions of Rule 9J-5, Florida Administrative Code.

CONCLUSIONS OF LAW

71. Pursuant to Sections 120.57(1) and 163.3184(9)(a), Florida Statutes, the Division of Administrative Hearings has jurisdiction over the parties and the subject matter.

72. Petitioner Hamm is an "affected person" within the meaning of Section 163.3184(1)(a), Florida Statutes, and thus has standing to challenge the Department's determination that the County's plan amendment is in compliance. There is no evidence that Petitioners Bicket submitted oral or written objections during the local government review and adoption proceedings. Accordingly, standing of Petitioners Bicket to bring this proceeding has not been shown.

Notice and Public Participation

73. Rule 9J-5.004(1), Florida Administrative Code, provides that the local government and local planning agency adopt procedures to provide for and encourage public participation in the planning process, including amendments to the comprehensive plan. The procedures "shall include" provisions to:

assure that real property owners are put on notice, through advertisement in a newspaper of general circulation in the area or other method adopted by the local government, of official actions that will affect the use of their property.

74. Rule 9J-5.004(2)(b) and (e), Florida Administrative Code, states that the public participation procedures shall include provisions "for notice to keep the general public informed" and "to assure the consideration of and response to public comments."

75. The local government is required to comply with procedures which it adopts to govern public participation. Rule 9J-5.005(8), Florida Administrative Code, provides that plans and plan amendments shall be considered and adopted in accordance with procedural requirements of Section 163.3161 through Section 163.3215, Florida Statutes, by ordinance after required public hearings.

76. Section 163.3181(1), Florida Statutes, expresses the legislative intent with regard to public participation as follows:

It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. Towards this end, local planning agencies and local governmental units are directed to adopt procedures designed to provide effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property. The provisions and procedures required in this act are set out as the minimum requirements towards this end.

77. Section 163.3184(15)(c), Florida Statutes, provides:

If the proposed comprehensive plan or plan amendment changes the permitted uses of land or changes land-use categories, the required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published less than 5 days a week. The advertisement shall be in substantially the following form:

NOTICE OF CHANGE OF LAND USE

The ((name of local governmental unit)) proposes to change the use of land within the area shown in the map in this advertisement.

A public hearing on the proposal will be held on ((date and time)) at ((meeting place)).

The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposal. The map shall include major street names as a means of identification of the area.

78. The criteria of public participation, procedural in nature, should not be confused with substantive criteria of Chapter 163, Part II, and Chapter 9J-5. Local governments retain considerable discretion to make local planning

decisions and to base those decisions on local considerations, such as land use compatibility. The local government must merely consider and respond to public comments. The environment of a public hearing dictates that the responses to complex questions will not approach the plan or data and analysis in terms of comprehensiveness or even sophistication. *Wilson v. City of Cocoa and Department of Community Affairs*, DOAH Case No. 90-4821GM, Recommended Order, dated August 8, 1991.

79. The County complied with the statutory requirements regarding notice of its proposed amendments to the Future Land Use Map. Additionally, Petitioner Hamm was afforded notice and openly participated, personally and through representatives, at the plan amendment adoption public hearing held November 14, 1992.

Burden of Proof: The Fairly Debatable Standard

80. Chapter 9J-5, Florida Administrative Code, was adopted by the Department pursuant to Chapter 163, Part II, Florida Statutes, in order to provide guidance as to minimum requirements which plans must meet to be "in compliance." That term is defined in Section 163.3184(1)(b), Florida Statutes, and reads as follows:

"In compliance" means consistent with the requirements of ss. 163.3177, 163.3178, and 163.3191, the state comprehensive plan, the appropriate regional policy plan, and rule 9J- 5, F.A.C., where such rule is not inconsistent with Chapter 163, Part II.

81. Pursuant to Section 163.3184(9)(a), Florida Statutes, the local plan or plan amendment shall be determined to be "in compliance" if the local government's determination of compliance is fairly debatable.

82. Therefore, Petitioner must provide to the exclusion of fair debate that the plan is not in compliance. Section 163.3184(9)(a), Florida Statutes.

83. The Act does not define what is meant by "fairly debatable." In zoning cases, the "[t]he fairly debatable" test asks whether reasonable minds could differ as to the outcome of a hearing" (citations omitted). *Norwood-Norland Homeowners' Association, Inc. v. Dade County*, 511 So.2d 1009, 1012 (Fla. 3d DCA 1987). The element of reasonableness imposes certain requirements upon the persons differing as to the outcome. The fairly debatable test requires that the persons reaching different conclusions are informed by relevant facts and law and are capable of analyzing this information in a reasonable manner in order to reach a logical conclusion based exclusively on the applicable facts and law. *Pope v. City of Cocoa Beach and Department of Community Affairs*, DOAH Case No. 90-3581GM, Recommended Order, dated March 4, 1991.

84. Petitioner's burden is a heavy one. See *Allapattah Community Association, Inc. v. City of Miami*, 379 So.2d 387, 392 (Fla. 3d DCA 1980); *S.A. Healy Co. v. Town of Highland Beach*, 355 So.2d 813 (Fla. 4th DCA 1978). To meet this burden, Petitioner must show that its position regarding the adoption of the subject plan amendment is not subject to reasonable debate or legitimate controversy. See *City of Miami Beach v. Lachman*, 71 So.2d 148, 152 (Fla. 1953); *Norwood-Norland Homeowners Association Inc. v. Dade County*, 511 So. 2d 1009, 1012 (Fla. 3d DCA 1987); *Sarasota County v. Purser*, 476 So.2d 1359, 1362 (Fla.

2d DCA 1985); Marrell v. Hardy, 450 So.2d 1207, 1209 (Fla. 4th DCA 1984).
Petitioner has not met this burden.

85. If reasonable men can differ as to the propriety of the action taken by the County with respect to the adoption of the subject plan amendment, this tribunal cannot substitute its judgment for that of the Board of County Commissioners. See Palm Beach County v. Tinnerman, 517 So.2d 699 (Fla. 4th DCA 1987), rev. denied, 528 So.2d 1183 (Fla. 1988).

86. As previously noted, Petitioner's objections to the changes to the land use classification of his property as designated on the Future Land Use Map series formed the gravamen of Petitioner's challenge.

87. All goals, objectives, policies, standards, findings and conclusions within the comprehensive plan and its support documents must be based upon relevant and appropriate data. A designation on a Future Land Use Map also falls within this requirement. Rules 9J-5.005(2)(a), 9J-5.006(2), Florida Administrative Code. The FLUM is the mechanism for establishing the distribution, location and extent of the various proposed land uses. Land use determinations on the map are to be "supplemented" by goals, objectives and policies in the plan. Section 163.3177(6)(a), Florida Statutes. The FLUM determines the type and intensity of development that will occur on a given parcel, and it must "reflect" goals, objectives and policies of the plan. Rule 9J-5.005(5), Florida Administrative Code. See Department of Community Affairs v. Walton County, ER FALR '92:208, November 4, 1992.

88. Petitioner failed to prove the validity of any of his objections, beyond fair debate, including allegations that the County's comprehensive plan amendment does not adequately address the coordination of future land uses with available facilities and services, thereby encouraging urban sprawl; the promotion of strip commercial along the state highway system; the quantity and quality of data and analysis relative to roadway impacts expected from the strip commercial land along State Road 50 near Oak Hill Hospital and the methodology utilized by the County; the quantity and quality of the data and analysis relative to the number and location of the commercial nodes near U.S. 19 and State Road 50 as reflected in the commercial nodes map and the methodology utilized by the County; and the policies included in the Future Land Use Element and the Future Land Use Map.

89. The testimony and evidence presented at the hearing shows that reasonable minds, of expert planners and others, can differ as to the extent to which the subject plan amendment adequately addresses these compliance issues.

90. The testimony and evidence presented by Petitioner at the hearing failed to show to the exclusion of fair debate that the Hernando County's comprehensive plan amendment is not "in compliance" with Section 163, Part II, Florida Statutes, Chapter 187, Florida Statutes, the regional policy plan and Rule 9J-5, Florida Administrative Code.

RECOMMENDATION

Based on the foregoing it is RECOMMENDED that a final order be entered finding the comprehensive plan amendment adopted November 14, 1990 by Hernando County to be in compliance.

DONE AND ENTERED this 26th day of February, 1993, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of February, 1993.

ENDNOTE

1/ In order to facilitate comprehension, all quotations from the comprehensive plan found in this recommended order have previously struck-through language deleted and previously underlined language added.

APPENDIX

The following constitutes my specific rulings, in accordance with Section 120.59, Florida Statutes, on findings of fact submitted by the parties.

Petitioner Hamm's Proposed Findings.

Proposed findings consisted of paragraphs numbered 11-112 and are treated as follows:

- 11.-23. Accepted.
- 24. Rejected, subordinate to Hearing Officer's findings on this point.
- 25.-26. Accepted.
- 27. Rejected, subordinate to HO findings on this point.
- 28.-29. Accepted, except for last two sentences of 29 which are rejected.
- 30.-32. Subordinate to HO findings on this point.
- 33.-39. Accepted.
- 40.-41. Subordinate to HO findings on this point.
- 42.-46. Rejected, unnecessary.
- 47.-50. Accepted.
- 51.-53. Subordinate to HO findings on this point.
- 54.-56. Rejected, unnecessary.
- 57.-58. Rejected, argumentative.
- 59.-60. Rejected, procedural.
- 61. Rejected, subordinate to HO findings.
- 62.-64. Rejected, not supported by weight of the evidence.
- 65.-66. Accepted.
- 67. Subordinate to HO findings.
- 68.-69. Accepted.
- 70. Subordinate to HO findings.
- 71. Accepted.

- 72. Subordinate to HO findings.
- 73. Rejected, recitation of testimony.
- 74.-77. Accepted.
- 78.-81. Accepted.
- 82.-87. Subordinate to HO findings.
- 88.-90. Rejected, unnecessary.
- 91.-103. Accepted.
- 103.-105. Subordinate to HO findings.
- 106.-112. Rejected, not supported by weight of the evidence.

Petitioners Bicket Proposed Findings.

No proposed findings submitted.

Respondents' Joint Proposed Findings.

Proposed findings on pages 5-7 of Respondents' submittal is improperly numbered and therefore not treated in this appendix. Proposed findings 1.-73., beginning on page 8 of that submittal are treated as follows:

- 1.-14. Accepted.
- 15. Rejected, unnecessary.
- 16.-22. Accepted.
- 23. Subordinate to HO findings on this point.
- 24. Adopted, though not verbatim.
- 25.-36. Addressed.
- 37.-45. Accepted.
- 46.-73. Adopted, though not verbatim.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.