STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DONALD L. BERG,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
DEPARTMENT OF COMMUNITY AFFAIRS,	)	CASE NOS. 91-7243RP
	)	91-7283RP
Respondent,	)	
and	)	
	)	
CITY OF KEY WEST,	)	
	)	
Intervenor.	)	

FINAL ORDER

Pursuant to notice, a formal hearing was conducted in these consolidated cases on December 13 and December 17, 1991 before J. Stephen Menton, a duly designated Hearing Officer of the Division of Administrative Hearings. The hearing was conducted by telephone with the Hearing Officer in his office in Tallahassee, counsel for Respondent, Department of Community Affairs ("DCA",) in their office in Tallahassee, and counsel for Petitioner, Donald L. Berg, and counsel for Intervenor, the City of Key West (the "City",) in Key West.

APPEARANCES

For Petitioner: Andrew W. Tobin, Esquire
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For Intervenor: Leslie K. Dougall
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STATEMENT OF THE ISSUES

The issues to be resolved in these consolidated cases are whether DCA's Emergency Rule 9JER-91-3, Florida Administrative Code, and proposed Rule 9J-

22.014 should be invalidated pursuant to Sections 120.56 and 120.54(4), Florida Statutes, respectively.

PRELIMINARY STATEMENT

On September 3, 1991, the City adopted Ordinance 91-25, (the "Ordinance") which provided for a 180 day moratorium on certain development in the City. The City is designated as an Area of Critical State Concern pursuant to Rule 28-36, Florida Administrative Code. Accordingly, ordinances regulating land development do not take effect unless DCA approves them "by rule" as set forth in Section 380.0552(9), Florida Statutes. The Ordinance provided that the 180 day moratorium would begin on the effective date of the administrative rule approving the Ordinance.

On September 18, 1991, DCA filed a rule packet for Emergency Rule 9JER-91-3, Florida Administrative Code, (the "Emergency Rule") with the Secretary of State. The Emergency Rule became effective on the date of filing and approved the Ordinance. On October 10, 1991, DCA filed a rule packet for proposed rule 9J-22.013 (the "Proposed Rule") with the Secretary of State. The Notice of Proposed Rule 9J-22.013 appeared in the October 18, 1991 edition of the Florida Administrative Weekly. On October 24, 1991, DCA filed a Notice of Change with the Secretary of State stating that the correct number for the proposed rule was 9J-22.014, since 9J-22.013 had already been used. The Notice of Change appeared in the November 1, 1991 edition of the Florida Administrative Weekly.

In a Petition for Administrative Hearing dated November 5, 1991 and filed with the Division of Administrative Hearings ("DOAH") on November 6, 1991, Petitioner challenged the Proposed Rule pursuant to Section 120.54, Florida Statutes. Similarly, in a Petition for Formal Administrative Hearing dated November 12, 1991 and filed with DOAH on November 13, 1991, Petitioner challenged the Emergency Rule pursuant to Section 120.56, Florida Statutes. The challenge to the Proposed Rule was assigned DOAH Case No. 91-7243RP and the challenge to the Emergency Rule was assigned DOAH Case No. 91-7283RP. Both cases were originally assigned to Hearing Officer William F. Quattlebaum, who entered an Order of Consolidation on November 18, 1991. On December 5, 1991, Hearing Officer Quattlebaum entered an Order Granting Petition to Intervene with respect to a Petition to Intervene filed by the City of Key West on December 3, 1991.

As set forth in an Order Denying Petitioner's Motion for Change of Venue and Establishing Requirements for Telephonic Hearing entered by Hearing Officer Quattlebaum on December 6, 1991, the hearing was scheduled to be conducted telephonically. The parties agreed upon a procedure for administering oaths to each of the witnesses. Prior to the hearing, the cases were transferred to Hearing Officer J. Stephen Menton, who conducted the hearing by telephone as scheduled.

At the outset of the hearing, DCA advised that the Emergency Rule was scheduled to expire in the immediate future and DCA intended to adopt another Emergency Rule upon the expiration of the challenged one. The parties stipulated that the Final Order entered in this case would be binding on DCA with respect to subsequently promulgated emergency rules that were identical to the Emergency Rule in this case and that were adopted during the pendency of this proceeding.1

During the hearing, Petitioner presented the testimony of five witnesses: Theodore C. Strader, city planner for the City of Key West; Petitioner Donald L.

Berg; Ray Capas, an expert in real estate valuation in the City of Key West; David Ornstein, an expert in comprehensive planning; and James L. Quinn, who is employed by DCA as the administrator of the Area of Critical State Concern Program.

The City recalled Mr. Strader and qualified him as an expert in municipal planning. DCA presented the testimony of Tricia Wrenn, a planner employed by DCA, and recalled James L. Quinn. Both Ms. Wrenn and Mr. Quinn were qualified and accepted as experts in comprehensive planning.

Prior to the hearing, the parties filed a Prehearing Stipulation which identified the exhibits that each of the parties intended to use during the hearing. The parties stipulated to the authenticity of all the exhibits listed in the Prehearing Stipulation and agreed to use the numbering system followed in the Prehearing Stipulation. During the hearing, Petitioner moved twenty one exhibits into evidence, Exhibits A-1, A-3, A-4, A-5, A-6, B-1 through B-15, and C-4 on the Prehearing Stipulation list, all of which were accepted. The City moved seventeen exhibits into evidence, C-1 through C-17, all of which were accepted. Most of the exhibits listed by DCA in the Prehearing Stipulation were offered into evidence by Petitioner. DCA did not offer any other exhibits into evidence. During the hearing, DCA complained that it had never been provided with a copy of Exhibit A-1, which was offered into evidence by Petitioner. As noted above, the Exhibit was accepted into evidence. DCA was instructed to file a Motion to Supplement the Record if, upon receipt of the Exhibit, it determined that some evidentiary response was necessary. No such Motion has been filed.

A transcript of the hearing has been filed. All parties have submitted proposed final orders. A ruling on each of the parties' proposed findings of fact is included in the Appendix attached to this Final Order.

FINDINGS OF FACT

Based upon the oral and documentary evidence adduced at the final hearing and the entire record in this proceeding, the following findings of fact are made:

1. DCA is the state land planning agency with the power and duty to exercise general supervision over the administration and enforcement of Chapter 380, Florida Statutes, including Areas of Critical State Concern, and all rules and regulations promulgated thereunder. See, Section 380.031(18), Florida Statutes.

2. The City of Key West is in the Florida Keys Area of Critical State Concern. See, Section 380.0552(3), Florida Statutes and Rule 27F-8, Florida Administrative Code.

3. Since the City is in the Florida Key's Area of Critical State Concern, City ordinances regulating land development do not take effect until DCA approves them "by rule." See, Section 380.0552(9), Florida Statutes. See also, Section 380.05(6), Florida Statutes (which provides that no proposed land development regulation in an Area of Critical State Concern shall become effective until DCA has adopted a rule approving such regulation.)

4. In pertinent part, Section 380.0552, Florida Statutes provides:

> 380.0552 Florida Keys Area; protection and designation as area of critical state concern.--

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.--State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and regulatory activities consistent with the principles for guiding development as set forth in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which chapter is hereby adopted and incorporated herein by reference. For the purposes of reviewing consistency of the adopted plan or any amendments to that plan with the principles for guiding development and any amendments to the principles, the principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions. However, the principles for guiding development as set forth in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, are repealed 18 months from July 1, 1986. After repeal, the following shall be the principles with which any plan amendments must be consistent:

(a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.

(b) To protect shorelines and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

(e) To limit the adverse impacts of development on the quality of water throughout the Florida Keys.

(f) To enhance natural scenic resources, promote the aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys.

(g) To protect the historical heritage of the Florida Keys.

(h) To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;
2. Sewage collection and disposal facilities;
3. Solid waste collection and disposal facilities;
4. Key West Naval Air Station and other military facilities;
5. Transportation facilities;
6. Federal parks wildlife refuges, and marine sanctuaries;

> 7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
> 8. City electric service and the Florida Keys Co-op; and
> 9. Other utilities, as appropriate.
> (i) To limit the adverse impacts of public investments on the environmental resources of the Florida Keys.
> (j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.
> (k) To provide adequate alternatives for the protection of public safety and welfare in the event of a natural or man-made disaster and for a post-disaster reconstruction plan.
> (l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.
>
> * * *
>
> (9) MODIFICATION TO PLANS AND REGULATIONS.--Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment or rescission shall become effective only upon the approval thereof by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development set forth in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and shall either approve or reject the requested changes within 60 days of receipt thereof. Further, the state land planning agency, after consulting with the appropriate local government, may, no more often than once a year, recommend to the Administration Commission the enactment, amendment, or rescission of a land development regulation or element of a local comprehensive plan. Within 45 days following the receipt of such recommendation by the state land planning agency, the commission shall reject the recommendation, or accept it with or without modification and adopt it, by rule, including any changes. Any such local development regulation or plan shall be in compliance with the principles for guiding development. (Emphasis supplied.)

5. In sum, any land development regulations adopted by the City must be submitted to DCA for approval or rejection pursuant to Section 380.0552(9). Such regulations become effective when approved by DCA. In evaluating an Ordinance submitted pursuant to Section 380.0552(9), DCA will look to the Principles for Guiding Development found in Section 380.0552(7), Florida Statutes. DCA is directed to approve a proposed ordinance if it is in compliance with the Principles for Guiding Development; conversely, DCA is without authority to approve a proposed amendment which is not in compliance with the Principles for Guiding Development.

6. On September 3, 1991, the City adopted Ordinance 91-25 (the "Ordinance") which provides for a 180 day moratorium on certain development activities in the City. The Ordinance prohibits

> ...the approval of Community Impact Assessment Statements and site plans for projects falling within the scope of the city's CIAS ordinance, where the proposed density or intensity of use is inconsistent with the permitted density or intensity under the future land use map of the city's pending comprehensive plan or the property is situated in an area designated as coastal high hazard or wetlands on the Future Land Use Map of the City's pending comprehensive land use plan...

7. A building moratorium, such as that set forth in the Ordinance, constitutes a land development regulation as defined in Section 380.031(8), and Rule 28-20.19(4), Florida Administrative Code. Therefore, the moratorium could not take effect until approved by DCA by rule.

8. A Community Impact Assessment Statement ("CIAS"), as defined in Section 34.04, Key West Code, describes expected impacts of proposed development on specified City resources and infrastructure. While a CIAS is not a development order, the City requires a CIAS as a precondition to the granting of a building permit for most large projects in the City. A developer is required to submit a CIAS for a proposed residential or hotel/motel development of ten or more habitable units or a proposed commercial development of 10,000 square feet or more. A CIAS is intended to ensure that the impacts a proposed project will have upon public facilities and the social and economic resources of the community are considered in the planning process and to avoid surprises during the planning process. The City will reject a CIAS that it finds to be incomplete or misleading.

9. The City Commission held its first hearing on the Ordinance on June 18, 1991. At least five public hearings before the City Commission were held prior to the City's adoption of the Ordinance.

10. The 1981 City of Key West Comprehensive Plan (the "Existing Comprehensive Plan") sets forth certain parameters and standards for the issuance of development orders. The Existing Comprehensive Plan has been approved by the Administration Commission in Chapter 28-37, Florida Administrative Code. The City of Key West land development regulations and certain amendments to the Existing Comprehensive Plan have been approved by DCA in Chapter 9J-22, Florida Administrative Code. The City is required by the States's growth management statute, Part II of Chapter 163, Florida Statutes, to submit to DCA a new comprehensive plan. Since the City is in an Area of Critical State Concern, the new comprehensive plan will not take effect until it is approved by DCA by rule. The Existing Comprehensive Plan remains in effect until a new plan is adopted.

11. At the time the Ordinance was adopted, the City was in the process of preparing a new comprehensive plan to guide future development. By adopting the moratorium, the City sought to provide itself with an opportunity to effectively implement a new comprehensive plan.

12. The City submitted a proposed new comprehensive plan (the "Pending Comprehensive Plan") to DCA on December 2, 1991. DCA and the City are currently involved in negotiations over whether the Pending Comprehensive Plan is in compliance with the state's growth management law, Chapter 163, Florida

Statutes, and the rules promulgated thereunder, Rule 9J-5, Florida Administrative Code.

13. The Pending Comprehensive Plan was still in the draft stages at the time the Ordinance was adopted. As indicated above, the City adopted the moratorium for projects requiring a CIAS in an effort to ensure that the City would be able to effectively implement a new comprehensive plan. The City is faced with numerous development-related problems which it attempts to address in the Pending Comprehensive Plan. These problems include:

A. Water Quality

1. Water Resources - The City draws all of its water from the Biscayne Aquifer. The water is pumped from wellfields on the mainland in Dade County and is transported through a single pipe to Monroe County to provide water to the Florida Keys population. While there is no immediate problem with the availability of water for the City, the Florida Keys Aqueduct Authority and the South Florida Water Management District (SFWMD) are in the process of preparing a water supply plan for Dade County and the Keys. These agencies recently informed all Monroe County local governments that they are approaching the limit of water that can be supplied from the aquifer and it is expected that there will be limitations on any further increases in consumption and/or consumptive use permits. The City and DCA contend that the moratorium will help the City to effectively analyze and address these issues in its new comprehensive plan. Chapter 4 of the Pending Comprehensive Plan would require the City to develop a plan for potable water resources, including replacement of the aging water main, providing for emergency supplies, and emphasizing the need to conserve water.

2. Sewer System - Sewage treatment in the City of Key West is a serious problem. The treated effluent is currently dumped into the Atlantic Ocean and has been implicated in the degradation of the environmentally sensitive and unique coral reefs. Chapter 4 of the Pending Comprehensive Plan would direct the City to substantially improve its wastewater treatment level of service, prevent system infiltration, fix leaky pipes, and reduce the pollution of the surrounding waters.

3. Stormwater Runoff - The waters surrounding the island of Key West have been designated Outstanding Florida Waters, pursuant to Chapter 403, Florida Statutes. The runoff generated by rains in the City is currently channeled into these waters either directly or via canals. The Existing Comprehensive Plan does not contain extensive guidance regarding stormwater runoff. Chapter 4 of the Pending Comprehensive Plan would direct the City to conduct a half million dollar study over the next two years to examine, develop, and implement a stormwater management plan. Section 4-2.1(d) of the Pending Comprehensive Plan would also require improved levels of service for stormwater runoff.

B. Hurricane Evacuation - The evacuation of people out of the Florida Keys during a hurricane is an important element in the planning process for the City. The Existing Comprehensive Plan does not provide any standards for hurricane evacuation. Chapter 2 of the Pending Comprehensive Plan requires the City of Key West to develop a feasible hurricane evacuation plan and coordinate its implementation with the County. The City has taken no action on this directive to date.

A model is being developed within the Monroe County Comprehensive Plan for the safe evacuation of residents from the Florida Keys. The model will include updated information based upon the Pending Comprehensive Plan. The inclusion of

new development into the model is complicated. By temporarily limiting new development, the City can provide more certainty to this planning process.

C. Wetlands and Environmental Protection - The Pending Comprehensive Plan seeks to strengthen and clarify the Existing Comprehensive Plan provisions regarding wetlands and habitat protection by reducing densities within wetlands, salt ponds, and coastal high hazard areas and requiring the adoption of amended land development regulations which extensively improve the City's environmental protection requirements.

D. Residential Housing and Conversion to Transient Units - There have been a significant number of conversions from residential to transient units (hotels, motels, and other tourist accommodations) in the City during the last several years. The increase in "transient" persons exacerbates the strain upon public facilities, especially transportation facilities. The Existing Comprehensive Plan offers little protection to residential areas from commercial and transient intrusion. The Future Land Use Element of the Pending Comprehensive Plan attempts to guide and plan the locations of conversions.

E. Transportation - Many roads in the City are currently operating at poor levels of service, including U.S. Highway 1, the main arterial roadway in the City. The City has never had a specific plan to improve the levels of service. The City is required under the growth management statute (Chapter 163) to provide adequate levels of service on the roads within the City. Chapter 2 of the Pending Comprehensive Plan proposes to implement an extensive traffic circulation system over the next twenty years which will include roadway improvements, revised levels of service, and nonmotorized transportation provisions.

F. Solid Waste - Currently, the City's solid waste is disposed at a local landfill. The City's solid waste disposal facility is currently operating under a year old consent order that directs the facility to be closed within three years. The Existing Comprehensive Plan states that the City is to provide adequate public facilities, but does not explain what constitutes "adequate". The Existing Comprehensive Plan does not provide a plan for the impending closure. The Pending Comprehensive Plan would require the City to provide the funding for solid waste disposal improvements.

14. The clear goal of the Ordinance was to delay the approval of certain CIAS applications, site plans and building permits for 180 days while work continued on the Pending Comprehensive Plan. The City contends that the moratorium will help it to effectively implement the policies which it anticipates will be incorporated in the new comprehensive plan when it is finally in place. The Ordinance provided that the 180 day moratorium would begin on the effective date of the administrative rule approving the Ordinance. The City and DCA were concerned that normal administrative rulemaking time periods would defeat the purpose of the Ordinance. Normal rulemaking pursuant to Section 120.54, Florida Statutes, generally takes between 90 to 120 days.

15. Many local governments experience a significant increase in development proposals immediately prior to the adoption of a new comprehensive plan. Many of these proposals are prompted by a fear as to the impact of the new plan and seek to acquire vested rights under the old plan. The City and DCA were concerned that such an increase in development proposals might complicate the planning process by rendering some aspects or assumptions of a new plan moot before the plan could even be adopted. Moratoria are frequently used by local

governments in order to complete an effective comprehensive plan without the need for changes.

16. In the year immediately proceeding the adoption of the Pending Comprehensive Plan by the City Commission (from September 1990 through September 1991), the City received seven CIAS applications. No CIAS applications had been received during the year prior. The City contends that many of the 1990/1991 applications were motivated by an attempt to obtain vested development rights. However, no persuasive evidence to support this speculation was presented.

17. The City Commmission did not consider any reports, studies or other data in connection with the enactment of the Ordinance. At the time the Ordinance was adopted, the City Commission did not make any specific determinations that there were any immediate dangers to the public health, safety or welfare of the community nor was the Ordinance enacted as an emergency ordinance.

18. After its adoption by the City Commission, the Ordinance was transmitted to DCA on September 5, 1991 for approval pursuant to Section 380.0552(9), Florida Statutes. The only information transmitted to DCA was a copy of the Ordinance.

19. As indicated above, the City and DCA were concerned that normal administrative rulemaking time periods would defeat the purpose of the City's Ordinance. The City Planner contacted DCA to request approval of the Ordinance by emergency rule. The City Planner and DCA concurred in the conclusion that the purpose of the Ordinance would be defeated if it was not immediately implemented.

20. The City Commission did not specifically ask or authorize the City Planner to request DCA to enact the Ordinance by emergency rule.

21. The City's concerns included, among other things, that the conversions of residential properties to transient tourist accommodations would accelerate during the process of finalizing the Pending Comprehensive Plan. In addition, the City expects that its new comprehensive plan will reexamine the densities in coastal high hazard areas. By adopting a moratorium, the City sought to insure that any new developments will comply with the new densities ultimately adopted.

22. On September 18, 1991, DCA filed the rule packet for the Emergency Rule with the Secretary of State and the Emergency Rule became effective on that date. DCA did not prepare an economic impact statement for the Emergency Rule. The rule packet consisted of: (a) a Certification Of Emergency Rule; (b) the Notice Of Emergency Rule; (c) a Statement Of The Specific Facts And Reasons For Finding An Immediate Danger To The Public Health, Safety And Welfare, (the "Statement of Specific Reasons") and (d) a Statement of the Agency's Reasons for Concluding that the Procedure Used Is Fair under the Circumstances (the "Agency Conclusions").

23. The Notice of Emergency Rule appeared in the September 27, 1991 edition of the Florida Administrative Weekly.

24. In the Statement of Specific Reasons, DCA concluded that:

> ...Generally, a [comprehensive] plan revision process stimulates an accelerated rate of permit requests. Accelerated permitting including the acquisition of

> vested rights during a planning period will severly erode the City's ability to effectively revise and implement the comprehensive plan. Such accelerated development will also lead to further deterioration of current hurricane evacuation clearance time for the City. This action will increase the existing potential for loss of life and injury to person [sic] and property, will cause further deterioration of level [sic] of service on existing roadways and will lead to irreversible environmental degradation. Therefore this rule must be adopted by emergency procedures because of the potential immediate danger to the public health, safety and welfare.

25. In the Agency Conclusions, DCA concluded:

> The emergency rulemaking is fair because (1) it immediately approves the ordinance as adopted by the City of Key West Commission and (2) normal rulemaking would moot the intent of the adopted ordinance since the City of Key West would be required to continue accepting applications for building permits, site plans, of [CIAS's] covering work projects or both, as set forth in Section 2 of ordinance 91-25 until the Department's rule approving the ordinance becomes effective.

26. DCA's Statement of Specific Reasons was not reviewed or discussed with the City or its planner prior to its preparation.

27. In deciding to promulgate the Emergency Rule, DCA considered the major public facilities and natural resource problems confronting the City and the City's proposed strategy to deal with these problems in the Pending Comprehensive Plan. DCA concluded that an immediate danger to the public health, safety, and welfare currently exists within the City justifying the approval of the Ordinance by emergency rule. The evidence clearly indicates that the City is facing many significant problems from a planning perspective. Petitioner contends, however, that there is no evidence that any of those problems present an "immediate" threat to the public health, safety or welfare. For the reasons set forth in the Conclusions of Law below, this contention is rejected.

28. On October 10, 1991, DCA filed a rule packet for the Proposed Rule with the Secretary of State. The rule packet consisted of the Notice Of Proposed Rule 9J-22.013, the Estimate of Economic Impact on All Affected Persons (the "EIS",) a Statement of the Facts and Circumstances Justifying Proposed Rule 9J-22.013 (the "Statement of Facts"), a summary of the Proposed Rule, a Comparison with Federal Standards, a Statement of Impact on Small Business and the text of the Proposed Rule.

29. The Notice of Proposed Rule 9J-22.013 appeared in the October 18, 1991 edition of the Florida Administrative Weekly. On October 24, 1991, DCA filed a Notice of Change with the Secretary of State, stating that the correct number for the Proposed Rule was 9J-22.014, since 9J-22.013 had already been used. The Notice of Change appeared in the November 1, 1991 edition of the Florida Administrative Weekly.

30. DCA did not consider any appraisals, data, reports or other studies concerning the economic impact that could result from the imposition of a moratorium. Instead, DCA followed the approach it had used in approving prior ordinances enacted by the City and concluded that its role in reviewing the Ordinance for compliance with the Priniciples Guiding Development did not require an examination of the economic impact of the underlying policy decisions reached by the City Commission in adopting the Ordinance.

31. The EIS states that:

> Costs and benefits will occur as a result of this ordinance and were considered by the City prior to adoption of the ordinance.

32. The City did not provide any information to DCA on the economic impacts of the Ordinance or on the impact of the Ordinance on the value of properties affected by it. The evidence was unclear as to the extent to which the City Commission considered economic impacts in deciding to adopt the Ordinance.

33. Several public hearings were held in connection with the adoption of the Ordinance and DCA assumed that interested parties had an opportunity to express their concerns regarding the economic impact of the Ordinance at these hearings. DCA did not inquire as to the number of projects under review by the City at the time the Ordinance was passed nor did it seek a determination as to whether any projects with vested rights were affected by the Ordinance.

34. The City Planning Department has retained a consultant, as required by the Ordinance, to conduct an economic study of existing conditions and projections for future growth. The purpose of this study is to assist in developing future amendments to the Ordinance. The study is not final and was not considered by the Key West City Commission when the Ordinance was enacted.

35. DCA concluded that the proposed moratorium adopted by the Key West City Commission was consistent with the Principles for Guiding Development. Therefore, DCA concluded that Section 380.0552 required it to approve the Ordinance. Petitioner has not presented any persuasive evidence to establish that the Ordinance is in any way inconsistent with the Principles for Guiding Development.

36. Petitioner owns 6.8 acres of vacant real property on Atlantic Boulevard in the City. He purchased the property in 1974 with the intent to develop it.

37. Petitioner's property is located in an R-2H zoning district. The City's future land use map designates Petitioner's property as multi-family.

38. Petitioner has spent approximately $71,000.00 to hire architects, engineers, surveyors, planners, biologists and attorneys to aid him in preparing to develop the subject property.

39. In 1989, Petitioner submitted applications for a Department of Environmental Regulation Surface Water Management permit, and an Army Corps of Engineers dredge-and-fill permit, but neither of those permits have been issued to date. Generally the City requires a developer to obtain these "higher-order" permits prior to issuing a building permit. Petitioner has never applied for or installed sewer service, water service or any other utility service to the

property. Since he acquired the property, Petitioner has not cleared any vegetation on the property except for minor trimming adjacent to the roadway which was required by the City for safety purposes.

40. In June of 1989, the City passed a resolution notifying the Department of Environmental Regulation that it opposed Petitioner's application to place fill upon the property.

41. On April 10, 1991, Petitioner submitted a CIAS to the City for a proposed 96 unit residential development in three buildings on the subject property.

42. Before the Ordinance was enacted, the City Planner prepared a report dated July 3, 1991 reviewing Petitioner's CIAS as required by the CIAS ordinance. In that review, the City Planner concluded:

> The project is located in the R-2H zoning district and conforms to all provisions of that district, thus requiring no variances or special exceptions.

43. On August 6, 1991, the Key West City Commission considered Petitioner's CIAS. The City Commission refused to approve the Petitioner's CIAS application. Specifically, the City Commission determined that Petitioner's CIAS application was incomplete and that the "submerged land district" designation ("SL") applied to the Petitioner's property as an overlay zoning district because Petitioner's property is located in an area which is deemed to include wetlands and mangroves. The City Commission requested that the CIAS address the "submerged land district" before the CIAS application could be deemed complete.

44. The City Planner was not present at the August 6, 1991 City Commission meeting.

45. The "submerged land district" in Section 35.07(f), City of Key West Code, provides that the density and site alteration of "environmentally sensitive areas including but not limited to wetland communities, mangroves, tropical hardwood hammocks and salt ponds shall be zoned with a maximum density of one (1) unit per acre. Site alteration shall be limited to a maximum of ten (10) percent of the total size." The "submerged land district" overlay zone applies to any parts of the property which fall within the description of "environmentally sensitive areas" in Section 35.07, City of Key West Code.

46. Because there is confusion over the interpretation and applicability of the SL district and because the SL land use district does not appear on the City's official zoning map, it was not considered in the preparation of the July 3 Report.

47. The evidence in this case was inconclusive as to whether Petitioner's property is located in a SL district and/or whether Petitioner's CIAS for his property can be approved under the City regulations in place prior to the adoption of the Ordinance.

48. On August 22, 1991, Petitioner submitted an amendment to the CIAS as well as a Site Plan. The amendment to the CIAS contests the City's conclusion that Petitioner's property should be considered part of a SL district.

49. As set forth above, during this time period, the City had began consideration of the Ordinance. The first hearing on the Ordinance was held on June 18, 1991 and the Ordinance was passed by the City Commission on September 3, 1991.

50. The City Planner notified Petitioner by letter dated October 11, 1991, that his CIAS Site Plan review and approval had been "stayed" because of the enactment of the Ordinance and because of the project's "inconsistencies with the City's Pending Comprehensive Plan." Petitioner requested an exception from the effect of the Ordinance pursuant to the procedure contained in the Ordinance. A hearing was held before the City Commission and the request was denied.

CONCLUSIONS OF LAW

51. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties hereto pursuant to Sections 120.54(4) and 120.56(4), Florida Statutes (1991).

52. Pursuant to Section 120.54(4)(a):

> Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule on the ground that the proposed rule is an invalid exercise of delegated legislative authority.

53. Section 120.56(1), Florida Statutes (1991), provides as follows:

> Any person substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

54. Respondent and Intervenor assert the Petitioner lacks standing because his CIAS and Site Plan are not approvable under the City's existing land use regulations, in particular the SL designation. That conclusion is beyond the scope of this proceeding. It is clear that the Petitioner submitted a CIAS on April 10, 1991, and later submitted an amended CIAS and Site Plan on August 22, 1991. On October 11, 1991, the City informed Berg that his amended CIAS and Site Plan had been "stayed" because of the Ordinance. On November 26, 1991, the City conducted a hearing under the Ordinance to determine whether Petitioner's project should be exempted. No exemption was granted.

55. Thus, Petitioner's project has been stayed as a direct result of the Ordinance which only became effective upon the emergency approval by DCA. Any further review of the project under the City's land development regulations has been halted. In view of these circumstances, it is concluded that Petitioner has standing to challenge the Proposed Rule as well as the Emergency Rule.

56. A proposed or existing rule is an "invalid exercise of delegated legislative authority" if any one or more of the following apply:

> (a) The agency has materially failed to follow the applicable rule-making procedure set forth in Section 120.54;

> (b) The agency has exceeded its grant of rule-making authority, citation to which is required by Section 120.54(7);
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by Section 120.54(7);
> (d) The rule is vague, fails to establish adequate standards for agency decisions or vests unbridled discretion in the agency; or
> (e) The rule is arbitrary or capricious.

Section 120.52(8), Florida Statutes.

57. As set forth in Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So.2d 759, 763 Fla. 1st DCA 1978), cert. denied, 376 So.2d 74 (Fla. 1979):

> ...[I]n a 120.54 hearing, the hearing officer must look to the legislative authority for the rule and determine whether or not the proposed rule is encompassed within that grant. The burden is upon one who attacks the proposed rule to show that the agency, if it adopts the rule, would exceed its authority; that the requirements of the rule are not appropriate to the ends specified in the legislative act; that the requirements contained in the rule are not reasonably related to the purpose of the enabling legislation or that the proposed rule or the requirements thereof are arbitrary or capricious.
>
> * * *
>
> The requirement that a challenger has the burden of demonstrating agency action to be arbitrary or capricious or an abuse of administrative discretion is a stringent one indeed.

58. In Department of Health and Rehabilitative Services v. Framat Realty, Inc. 407 So.2d 238 (Fla. 1st DCA 1981), the First District Court of Appeal reversed a hearing officer's order invalidating a rule as beyond the department's statutory authority. In reversing, the court made clear that administrative rules must be upheld as long as the rule is within the range of permissible interpretations of the statute, and that it is inappropriate to go further to investigate whether the department's interpretation of the statute is the only possible interpretation or the most desirable one. See also, Department of Administration v. Nelson, 424 So.2d 852 (Fla. 1st DCA 1982); Adam Smith Enterprises v. Florida Department of Environmental Regulation, 553 So.2d 1260, 1274 n.23 (Fla. 1st DCA 1989).

59. In sum, agencies are to be accorded wide discretion in the exercise of their lawful rule making authority. Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d 515 (Fla. 1st DCA 1984); Florida Commission on Human Relations v. Human Development Center, 413 So.2d 1251 (Fla. 1st DCA 1982). Furthermore, the goals and intent of the legislative grant of rule making authority must be considered in deciding whether to invalidate a proposed rule or an existing rule. See, Florida Waterworks Association v. Florida Public Service Commission, 473 So.2d 237 (Fla. 1st DCA 1985), rev. den. 486 So.2d 596 (Fla. 1986).

60. Sections 380.05(6) and (11), Florida Statutes, constitute both the specific authority for and the law implemented by the Emergency Rule and the Proposed Rule. DCA is required to review the Emergency Rule and the Proposed Rule solely to determine their compliance with the Principles for Guiding Development. As indicated in the Findings of Fact above, DCA concluded that the Ordinance is consistent with the Principles for Guiding Development contained within Rule 28-36.003, Florida Administrative Code. Therefore, DCA was required by Section 380.05, Florida Statutes, to approve the Ordinance by rule.

61. Whether or not the moratorium is appropriate or legally justified is beyond the scope of this proceeding. However, it is noted that, generally, a moratorium is considered valid as long as it is formally enacted as an ordinance in accord with all procedural requirements. "[B]uilding moratoria are vitally related to the public welfare, health and safety, and ... such 'holding devices' are valid pending a comprehensive evaluation of environmental values." Jason v. Dade, 37 Fla. Supp. 190, 192 (Dade County Cir. Ct. 1972). A moratorium is an appropriate planning tool for a local government to use when the local government is adopting a new comprehensive plan. Franklin County v. Leisure Properties, Ltd., 430 So.2d 475 (Fla. 1st DCA 1983). "A local government may be confronted with the need to amend its current plan prior to the adoption of a new plan in order to prevent the establishment of undesirable construction which would be inconsistent with the goals of the new plan." Id. at 481. In dicta, the Fourth District Court of Appeal recently concurred with the reasoning of Leisure Properties and noted that the "...forestalling of 'undesirable construction which would be inconsistent with the goals of the new plan' is accomplished through the proper enactment of an ordinance imposing moratorium." Gardens Country Club, Inc. v. Palm Beach County, 590 So.2d 488, 491 (Fla. 4th DCA 1991).

62. Petitioner offered no persuasive evidence that any aspect of either the Emergency Rule or the Proposed Rule was arbitrary or capricious, inconsistent with the enabling statutes, or otherwise invalid. The main arguments raised by Petitioner in this case were that the Emergency Rule was invalid because there is no immediate danger to the public health, safety and welfare and the Proposed Rule should be invalidated because no adequate EIS was provided.

63. In evaluating Petitioner's arguments, it is important to keep in mind the legislative objectives behind the rulemaking in this case. The Area of Critical State Concern program is intended to protect invaluable environmental and natural resources of regional or statewide importance through DCA oversight of land development regulations which are adopted by local governments located within Areas of Critical State Concern. Section 380.05, Florida Statutes. To assert that local governments in Areas of Critical State Concern cannot adopt moratoria without the delay caused by the rulemaking process would impose an unnecessary bureaucratic obstacle to the enactment of new City Ordinances or policies. The policy decisions inherent in a local government's decision to impose a building moratorium should not be subject to challenge and review pursuant to Chapter 120, Florida Statutes simply because the property in question has been designated an Area of Critical State Concern. Instead, any challenge should be limited to a review of DCA's determination of the consistency of the local government's actions with the Principles for Guiding Development.

64. As indicated in the Findings of Fact above, the City is facing serious problems with water quality, potable water supply, solid and liquid waste, transportation and hurricane evacuation. These problems motivated the City to

adopt a moratorium. In the context of this case, these problems represent a sufficient present danger to justify the approval of the Ordinance by emergency rule.

65. The Area of Critical State Concern designation should not be interpreted to affect the City of Key West's authority to adopt a moratorium under appropriate circumstances.2

66. An administrative agency is authorized to adopt an emergency rule upon a finding that an immediate danger to the public health, safety, or welfare exists. An agency is authorized to adopt any rule necessitated by the immediate danger by an procedure which is fair under the circumstances and necessary to protect the public interest. Section 120.54(9)(a), Florida Statutes.

67. While the agency reasons for finding a genuine emergency must be factually explicit and persuasive, see, Florida Homebuilders Association v. Division of Labor, 355 So.2d 1245, 1246 (Fla. 1st DCA 1978); Golden Rule Inc. v. Department of Insurance, 586 So.2d 429 (Fla. 1st DCA 1991), the courts have approved state agencies availing themselves of emergency rule procedures to bring their programs in accord with legislative objectives. Little v. Coler, 557 So.2d 157, 159 (Fla. 1st DCA 1990).

68. Unfortunately, time delays automatically built into the rule making process could preclude the Ordinance from becoming effective for several months absent approval by emergency rule. While the evidence does not necessarily indicate the collapse or failure of any public facility is imminent, DCA would be seriously impeding the implementation of the City's policy determination to enact a moratorium if it failed to promptly approve the Ordinance. In view of the purpose of DCA's review of the Ordinance and considering all of the circumstances of this case, it would be a mistake to require evidence of the imminent failure of some public facility before allowing DCA to adopt an emergency rule so that an important policy decision of the City can be immediately implemented. As noted above, the requirement that DCA approve the City's land development regulations is only intended to ensure that the regulations are in compliance with the Principles Guilding Development. It is not intended to otherwise interfere with or delay the policy determinations of the City.

69. The procedures used to adopt the Emergency Rule were fair under the circumstances and DCA properly deemed them to be necessary and appropriate to protect the public interest. The proper standard for such a determination is whether there was an abuse of discretion. Little v. Coler, 557 So.2d 157, 160 (Fla. 1st DCA 1990). In this case, the moratorium was advertised in local newspapers as a local ordinance and was subject to public comment at several Key West City Commission meetings. It was adopted by local officials with the authority to do so. The procedures followd by DCA in this case were fair and appropriate given its limited review function.

70. An economic impact statement is not required for emergency rules adopted pursuant to Section 120.54(9), Fla. Stat. Therefore, DCA's failure to prepare an economic impact statement for the Emergency Rule is not a basis for invalidating that Rule.

71. Petitioner's challenge to the Proposed Rule was premised largely on the purported inadequacy of the EIS. Petitioner argues that DCA is required to follow the rulemaking procedures of Section 120.54, Fla. Stat. (1991), which require both a summary of the estimate of the economic impact of the proposed

rule on all persons affected by it and a detailed economic impact statement reflecting information on the economic impact of the proposed agency action.

> This is to ensure a comprehensive and accurate analysis of economic factors; which factors work together with social factors and legislative goals underlying agency action; to direct agency attention to key considerations and thereby facilitate informed decision-making; and finally to expose the administrative process to public scrutiny.

Department of Health and Rehabilitative Services v. Wright, 439 So.2d 937, 940 (Fla. 1st DCA 1983).

72. Petitioner correctly points out that the failure to prepare an economic impact statement may be fatal to the validity of the rule. Department of Health and Rehabilitative Services v. Wright, 439 So.2d 937 (Fla. 1st DCA 1983); Polk v. The School Board of Polk County, 373 So.2d 960 (Fla. 2nd DCA 1979). However, deficiencies in an economic impact statement are not grounds to invalidate a proposed rule as long as the deficiency in the economic impact statement does not impair the fairness of the rule-making proceedings and, therefore, the harmless error doctrine will apply. Plantation Residents' Assn., Inc. v. Broward County School Bd., 424 So.2d 879 (Fla. 1st DCA 1982), pet. for rev. den., 436 So.2d 100 (Fla. 1983).

73. The absence or insufficiency of an economic impact statement is harmless error if it is established that the rule implements already established procedures, or if it is shown that the agency fully considered the asserted economic factors and impact. Department of Health and Rehabilitative Services v. Wright, 439 So.2d 937 (Fla. 1st DCA 1983); Florida-Texas Freight, Inc. v. Hawkins, 379 So.2d 944 (Fla. 1979). The economic impact statement for the Proposed Rule is not materially deficient when judged by these standards.

74. Again, it is important to keep in mind that the policy decision to impose a moratorium was made by the City and not DCA. To require DCA to conduct an economic study on this underlying policy choice would frustrate the legislative purpose of requiring DCA to review the Ordinance for compliance with the Principles Guiding Development.

75. In his Petitions to invalidate the Rules, Petitioner alleged several additional grounds. However, no persuasive evidence or argument was presented to support those grounds. It is noted that Petitioner has alleged that the Ordinance is unconstitutional for, among other reasons, failing to prescribe definite standards. See, City of Miami v. Save Brickell Ave. Inc., 426 So.2d 1100 (Fla. 3rd DCA 1983); Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978). Whether a proposed rule is constitutional can properly be addressed in a Section 120.54 proceeding. Department of Environmental Regulation v. Leon County, 344 So.2d 297 (Fla. 1st DCA 1977). The legislature has also recognized that emergency rules are "subject to applicable constitutional and statutory provisions." Section 120.54(9)(d), Florida Statutes. However, the City is not a State agency subject to the "Administrative Procedure Act", Chapter 120, Florida Statutes (1991). Therefore, Petitioner can not directly challenge the constitutionality of the Ordinance in this administrative hearing. See, Hill v. Monroe County, 581 So.2d 225 (Fla. 3rd DCA 1991). In view of the limited role of DCA in reviewing the Ordinance as set forth above, Petitioner's constitutional challenge to the Proposed Rule is rejected.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the Petitioner's challenge to the Proposed Rule and the Emergency Rule are dismissed.

DONE AND ORDERED this 8th day of May, 1992, at Tallahassee, Florida.

J. STEPHEN MENTON, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of May, 1992.

ENDNOTES

1/ Since the hearing, DCA has promulgated a Second Emergency Rule, 9J-ER-91-4, which extends the challenged Emergency Rule. For purposes of this Recommended Order, the references to "Emergency Rule" will include both Rule 9J-ER-91-3 and 9J-ER-91-4 references.

2/ Section 380.05(1)(b), Florida Statutes, provides that, "The [Administration Commission] is not authorized to adopt any rule that would provide for a moratorium on development in any area of critical state concern." This prohibition is intended to limit the Administration Commission from imposing or requiring a moratorium. It is not applicable in this case since DCA's only duty is to approve or reject comprehensive plan amendments and land development regulations initiated by the City. Such review is beyond the scope of Section 380.05(1)(b).

APPENDIX TO FINAL ORDER, CASE NOS. 91-7243RP and 91-7283RP

All parties have submitted Proposed Recommended Orders. The following constitutes my rulings on the proposed findings of fact submitted by the parties.

The Petitioner's Proposed Findings of Fact

Proposed Finding of Fact Number	Paragraph Number in the Findings of Fact in the Final Order Where Accepted or Reason for Rejection
1.	Adopted in substance in Findings of Fact 36.
2.	Adopted in substance in Findings of Fact 38.
3.	Subordinate to Findings of Fact 40.
4.	Subordinate to Findings of Fact 8.
5.	Adopted in substance in Findings of Fact 41 and 48.

6. The first two sentences are adopted in substance in Findings of Fact 6. The last sentence is rejected as unnecessary.
7. Adopted in substance in Findings of Fact 9 and 49.
8. Subordinate to Findings of Fact 43, 44 and 46.
9. Subordinate to Findings of Fact 46.
10. Adopted in substance in Findings of Fact 50.
11. Adopted in substance in Findings of Fact 9.
12. Rejected as unnecessary.
13. Adopted in substance in Findings of Fact 10 and 37.
14. Adopted in substance in Findings of Fact 10 and 12.
15. Rejected as vague and unnecessary.
16. Subordinate to Findings of Fact 17.
17. Subordinate to Findings of Fact 17.
18. Subordinate to Findings of Fact 17.
19. Rejected as unnecessary.
20. Subordinate to Findings of Fact 17.
21. Adopted in substance in Findings of Fact 17.
22. Subordinate to Findings of Fact 14, 15, 18 and 19.
23. Adopted in substance in Findings of Fact 18.
24. Adopted in substance in Findings of Fact 20.
25. Subordinate to Findings of Fact 14, 15, 19 and 21.
26. Subordinate to Findings of Fact 21.
27. Adopted in substance in Findings of Fact 26.
28. Rejected as vague and unnecessary.
29. Subordinate to Findings of Fact 15 and 16.
30. Rejected as unnecessary.
31. Rejected as unnecessary.
32. Rejected as unnecessary.
33. Subordinate to Findings of Fact 17.
34. Subordinate to Findings of Fact 18, 19 and 27.
35. Subordinate to Findings of Fact 18 and 27.
36. Subordinate to Findings of Fact 14, 15, 21 and 27.
37. Subordinate to Findings of Fact 27.
38. Subordinate to Findings of Fact 16.
39. Subordinate to Findings of Fact 16 and 27.
40. Subordinate to Findings of Fact 30 and 31.
41. Adopted in substance in Findings of Fact 30.
42. Subordinate to Findings of Fact 33.
43. Subordinate to Findings of Fact 30-33.
44. The first sentence is rejected as unnecessary. The second sentence is adopted in substance in Findings of Fact 33.
45. The first sentence is adopted in substance in Findings of Fact 31. The remainder of this proposal is subordinate to Findings of Fact 32 and 33.
46. The first sentence is adopted in substance in Findings of Fact 32. The second sentence is rejected as unnecessary.
47. Adopted in substance in Findings of Fact 34.
48. Addressed in the Conclusions of Law.
49. Rejected as unnecessary. The issue of whether Petitioner's project could or should have been exempted from the Ordinance is beyond the scope of this proceeding.
50. Rejected as unnecessary.

The Respondents's Proposed Findings of Fact

Proposed Finding of Fact Number	Paragraph Number in the Findings of Fact in the Final Order Where Accepted or Reason for Rejection.
1.	Adopted in substance in Findings of Fact 1.
2.	Adopted in substance in Findings of Fact 2 and 10.
3.	Adopted in substance in Findings of Fact 10-12.
4.	Subordinate to Findings of Fact 15.
5.	Adopted in substance in Findings of Fact 6 and 7.
6.	Adopted in substance in Findings of Fact 8.
7.	Subordinate to Findings of Fact 14-16, 21 and 27.
8.	Rejected as unnecessary except subparagraph b is adopted in substance in Findings of Fact 41, 43, 48 and 50.
9.	Subordinate to Findings of Fact 13.
10.	Subordinate to Findings of Fact 32 and 33.
11.	Adopted in substance in Findings of Fact 18.
12.	Adopted in substance in Findings of Fact 14.
13.	Adopted in substance in Findings of Fact 22.
14.	Adopted in substance in Findings of Fact 24 and 27.
15.	Adopted in substance in Findings of Fact 28.
16.	Adopted in substance in Findings of Fact 29.
17.	Adopted in substance in Findings of Fact 29.
18.	Subordinate to Findings of Fact 30 and 31.
19.	Subordinate to Findings of Fact 35.
20.	Adopted in substance in Findings of Fact 36-39.
21.	Adopted in substance in Findings of Fact 41 and 48.
22.	Addressed in paragraph 4 of the Conclusions of Law.
23.	Subordinate to Findings of Fact 43, 45 and 47.
24.	Adopted in substance in Findings of Fact 45.

The Intervenor's Proposed Findings of Fact

Proposed Finding of Fact Number	Paragraph Number in the Findings of Fact in the Final Order Where Accepted or Reason for Rejection.
1.	Adopted in substance in Findings of Fact 39.
2.	Adopted in substance in Findings of Fact 39.
3.	Adopted in substance in Findings of Fact 39.
4.	Adopted in substance in Findings of Fact 39.
5.	Adopted in substance in Findings of Fact 39.
6.	Subordinate to Findings of Fact 43, 46 and 50.
7.	Subordinate to Findings of Fact 46 and 47.
8.	Subordinate to Findings of Fact 46 and 47 and paragraph 4 of the Conclusions of Law.
9.	Adopted in substance in Findings of Fact 50.
10.	Addressed in paragraph 4 of the Conclusions of Law.
11.	Subordinate to Findings of Fact 15 and 16.
13.[sic]	Rejected as unnecessary.
14.	Rejected as unnecessary. No challenge was made to the procedures followed in adopting the Ordinance.
15.	Rejected as unnecessary.

16. Rejected as unnecessary.
17. Rejected as unnecessary.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68. FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.