

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAURA JOHNSON,)
)
 Petitioner,)
)
 vs.) Case No. 97-5003GM
)
 CITY OF TARPON SPRINGS and)
 DEPARTMENT OF COMMUNITY)
 AFFAIRS,)
)
 Respondents.)
)
 _____)
 SAM H. MACK, CONSTANCE S.)
 MACK, MARIKA SAMARKOS, and)
 LISA L. MACK,)
)
 Petitioners,)
)
 vs.) Case No. 97-5004GM
)
 CITY OF TARPON SPRINGS and)
 DEPARTMENT OF COMMUNITY)
 AFFAIRS,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Tarpon Springs, Florida, on November 2 and 3, 1998, and February 22, 23, and 24, 1999.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether the comprehensive plan amendment adopted by Ordinance No. 96-28 is in compliance with Chapter 163, Part II, Florida Statutes, and Chapter 9J-5, Florida Administrative Code.

PRELIMINARY STATEMENT

By Petition for Formal Administrative Hearing dated October 15, 1997, Petitioners Sam H. Mack, Constance S. Mack, Marika Samarkos, and Lisa L. Mack alleged that Respondent Tarpon Springs adopted a plan amendment that added an exception to a plan provision requiring a 30-foot setback for nonwater-dependent uses along the shoreline. The exception applies to "accessory structures on parcels where an existing seawall has effectively eliminated the natural function of the shoreline."

Petitioners Mack and Samarkos alleged that the plan amendment is inconsistent with the criteria of Sections 163.3177(6)(g)1-5 and 10, Florida Statutes, regarding the protection of natural resources, aesthetic values, and historic resources; Sections 163.3177(8) and (10)(e), Florida Statutes, and Rule 9J-5.005(2), Florida Administrative Code, regarding the existence of supporting data, its professional collection and analysis, and its status as the best available data; Sections 163.3181(1) and (2), Florida Statutes, regarding public participation; Section 163.3178(2)(b), Florida Statutes, regarding the analysis of the environmental and socioeconomic impact of development and redevelopment on natural and historic resources; Rule 9J-5.012(3)(b)6, Florida Administrative Code, regarding the direction of population away from the coastal high hazard area; Rule 9J-5.012(3)(b)8, Florida Administrative Code, regarding the reduction or elimination of exposure of private

property to natural hazards; Rule 9J-5.012[3](c)2, Florida Administrative Code, regarding the restoration or enhancement of disturbed or degraded natural resources through the loss of seawalls; Rule 9J-5.012[3](c)3, Florida Administrative Code, regarding the reduction of exposure of private property to natural hazards; and Rule 9J-5.012[3](c)7, Florida Administrative Code, regarding the designation of coastal high hazard areas and limitation of development in those areas.

Petitioners Mack and Samarkos also alleged that the plan amendment or its adoption is inconsistent with the requirements of the Plan Administration Element, Goal 2 of the Coastal Management and Conservation Element, Policy 6 of the Coastal Management and Conservation Element, Policy 11 of the Coastal Management and Conservation Element, Policy 14j of the Coastal Management and Conservation Element, Policy 22 of the Coastal Management and Conservation Element, and Policy 3 of the Coastal Management and Conservation Element.

By Petition for Administrative Hearing dated October 17, 1997, Petitioner Laura Johnson alleged that Respondent Tarpon Springs adopted Ordinance No. 96-28 in response to a final order determining that an earlier ordinance, Ordinance 94-29, was not in compliance. Petitioner Laura Johnson alleged that the plan amendment is inconsistent with Plan policies establishing a 15-foot wetlands buffer and 30-foot shoreline buffer. Petitioner Laura Johnson alleged that the plan amendment is inconsistent

with provisions in Chapter 9J-5, Florida Administrative Code, requiring the protection of wetlands and wildlife habitat.

At the hearing, Petitioners called six witnesses, and Respondents called two witnesses. One member of the public testified.

Petitioner Constance S. Mack offered into evidence 48 exhibits (Cuba Exhibits). She withdrew Cuba Exhibits 10, 12, 21, and 33. All other Cuba Exhibits were admitted except Cuba Exhibits 17, 25, 27, 35, 38, 41, and 42, which were proffered. Petitioner Lisa Mack offered into evidence Lisa Mack Exhibits 1-5 and 7-14. All were admitted except Lisa Mack Exhibit 9, which was proffered. Petitioner Laura Johnson offered into evidence two exhibits, Johnson Exhibits 2 and 3, which were both admitted. Respondent Tarpon Springs offered into evidence Tarpon Springs Exhibits 18, 29, 31, 33 (Conservation Element only), and, 38, which were all admitted.

The court reporter filed the Transcript on March 26, 1999.

FINDINGS OF FACT

1. Petitioners are residents of Tarpon Springs. By stipulation, Petitioners have standing.

2. This case arose out of a final order sustaining a challenge to a land development regulation adopted by Respondent City of Tarpon Springs (Tarpon Springs). The land development regulation allowed the construction of swimming pools and enclosures up to within eight feet of seawalls, despite Plan

requirements of a 15-foot buffer along all wetlands and a 30-foot setback for all shoreline construction outside of the Sponge Dock Area.

3. In Jeff and Laura Johnson and Department of Community Affairs v. City of Tarpon Springs, Case No. 95-6206GM, the Administrative Commission determined that the land development regulation was inconsistent with provisions of Tarpon Springs' comprehensive plan (Plan). However, the Administrative Commission withheld sanctions, as long as Tarpon Springs repealed the land development regulation, amended the land development regulation to make it consistent with the Plan, or amended the Plan to make it consistent with the land development regulation.

4. Choosing the third option, Tarpon Springs amended its Plan by adopted Ordinance No. 96-28 on August 5, 1997. The ordinance revises Policy 2 of the Coastal Zone and Conservation Element (Conservation) of the Plan. Petitioners have challenged Conservation Policy 2, as amended by Ordinance No. 96-28.

5. With the new language underlined, Conservation Policy 2 declares that the policy of Tarpon Springs is to:

Require a minimum 30 foot aquatic lands setback for non-water dependent uses along the City's shoreline with the exception of the historic Sponge Dock Area and accessory structures on parcels where an existing seawall has effectively eliminated the natural function of the shoreline. Accessory structures are defined as those detached from the principal building located on the same lot and customarily incidental and subordinate to the principal building or use. Accessory structures shall not include any

structure having an impervious roof supported by columns or walls and intended for the shelter, housing, or enclosing of any individual, animal, process, equipment, goods, or materials of any kind[.]
(Objectives 1 and 11)

6. The Plan contains several other relevant provisions, which were not the subject of the amendment. In general, Tarpon Springs has taken a comprehensive approach to comprehensive planning by adopting, as part of its Plan, supporting data and analysis and even provisions of Chapter 9J-5, Florida Administrative Code (Chapter 9J-5).

7. For instance, the Conservation Element recites each provision of Chapter 9J-5 requiring a goal, objective, and policy. As for objectives, various parts of the Conservation Element state, "It is the objective of the City of Tarpon Springs to . . .," and the Plan restates individual provisions of Rule 9J-5.012(3)(b). Responding to each objective reprinted from the rule, the Plan states various planning provisions.

8. Eight Conservation policies follow Rule 9J-5.012(3)(c)1, which requires a policy identifying regulatory or management techniques for: "Limiting the specific impacts and cumulative impacts of development or redevelopment upon wetlands, water quality, water quantity, wildlife habitat, living marine resources, and beach and dune systems." The eight policies provide:

1. Place all wetland areas in the preservation designation as shown on Schedule A, and ensure that no additional loss of

wetland vegetation occurs; (Objectives 1, 2, and 11)

2. [This is Conservation Policy 2 cited above.

3. Require a minimum 15 foot buffer zone adjoining all wetlands; (Objectives 1 and 11)

4. Identify design alternatives and funding sources for bayou erosion control; (Objective 3)

5. Utilize wetlands for stormwater filtering in accordance with the discussion under Section II.D.5, FDER, SWFWMD, and Chapter 17-25 requirements for water quality, quantity, and use; (Objectives 1, 6)

6. Restrict seawalling along the Gulf Coast shoreline, and require the replacement of seawalls in the Coastal High Hazard Area with stabilization techniques as exhibited by Figure 9 of this element in the event they are destroyed in excess of 50% of their replacement cost; (Objectives 1, 2, 3)

7. Require all development or redevelopment adjacent to wetlands or upland natural areas to assess the impact upon wildlife in order to evaluate and eliminate or minimize adverse impacts; (Objectives 1, 2, 11)

8. Require that post development runoff shall not exceed pre-development runoff for the 25 year frequency storm, 24 hour duration[,] in order to limit adverse impacts of water quantity and quality resulting from development or redevelopment; (Objectives 1, 2, 4 and 6)

9. Other Conservation provisions are:

Goal 2. Reduce shoreline conflicts through the land use planning process.

Policy 11. Include the restoration and utilization of wetlands as a part of the Master Drainage Plan[.] (Objectives 4, 6)

Policy 14j. Existing hazard mitigation programs that include shoreline restoration and enhancement, building code and floodplain regulations, development management techniques such as land regulations, development management techniques such as land use, zoning, and subdivision regulations, and other applicable hazard mitigation measures[,] shall continue to be implemented. These mitigation programs shall be amended, as necessary, to remain consistent with federal and state requirements.

Policy 22. All hurricane evacuation routes will be clearly posted within the City of Tarpon Springs by the Tarpon Springs Fire Department[.] (Objective 14)

10. Petitioners and Respondents dispute the meaning and effect of Conservation Policy 2. It is necessary to interpret Conservation Policy 2 before considering specific challenges to whether it is in compliance with various provisions of Chapter 163, Florida Statutes (Chapter 163), and Chapter 9J-5.

11. The obvious purpose of adding the accessory-structure exception to Conservation Policy 2 was to liberalize land uses within the 30-foot aquatic lands setback. Petitioners argue that the amendment also liberalizes land uses within the separate 15-foot wetlands buffer. This argument is incorrect; the amendment does not affect the restrictions accompanying the 15-foot wetlands buffer.

12. Before and after the amendment, the 15-foot wetlands buffer applies a separate land use restriction whose effect is not in any way dependent upon the existence of the 30-foot aquatic lands setback. Regardless of the amendment, if a

proposed land use is within the 15-foot wetlands buffer, the land use is subject to the restrictions imposed by the buffer.

13. The Future Land Use Element contains the following definition of "buffer": "A reserved area attractively landscaped and perpetually maintained as common open space, free of structures, impervious surface, roadways, storage, and other enclosures or appurtenances."

14. The 15-foot wetlands buffer thus prohibits the conversion of open space to other uses, which would include swimming pools. The accessory-structure exception in no way lessens the restrictions imposed by the 15-foot wetlands buffer. After consideration of the definition of "buffer," it is clear that the accessory-structure exception would only allow the installation of a swimming pool in the portion of the 30-foot aquatic lands setback that is outside of the 15-foot wetlands buffer.

15. Petitioners contend that the phrase, "existing seawall," is vague and ambiguous. The Plan fails to define these two words. As for the meaning of "seawall," the record contains some evidence that Tarpon Springs officials may have difficulty determining whether a deteriorated seawall constitutes an "existing seawall" or, effectively, riprap. Less likely, there may be some confusion as to whether a seawall fronted by riprap constitutes a seawall. However, it is at least fairly debatable

that Conservation Policy 2 is not so vague or ambiguous as to be unenforceable with respect to its definition of an "seawall."

16. The word, "existing," is not entirely free of ambiguity. The two best alternative interpretations are that "existing" refers to seawalls in existence when the subject Plan amendment becomes effective or that "existing" refers to seawalls in existence when the landowner files an application for a building permit for the accessory structure or when Tarpon Springs grants the permit application.

17. The better interpretation of "existing" is that it refers to seawalls in existence when the landowner files his or her application or Tarpon Springs grants the application. Conservation Policy 2 addresses the installation of accessory structures, not seawalls. Although the accessory-structure exception is dependent on the presence of a seawall, the exception directly addresses accessory structures, not seawalls.

18. Absent an explicit attempt to regulate seawall construction, nothing in the accessory-structure exception in Conservation Policy 2, or the policy itself, suggests an attempt to grandfather in only those seawalls in existence at the time of the adoption of the Plan amendment. The focus of the accessory-structure exception in Conservation Policy 2 is not on limiting the construction of seawalls, but on assuring that landowners will install accessory structures only behind functional seawalls. The more natural and practical reading of "existing"

is thus that it applies to seawalls in existence as of the time of the filing or granting of the application.

19. An interpretation that requires that the seawall be in existence as of the time of the granting of the permit serves the practical purpose of assuring that the seawall is in place when the accessory structure is installed. This important practical effect is not assured by the grandfathering-in interpretation, unless Tarpon Springs artificially stretches its interpretation of "existing" to mean only those seawalls in existence as of the effective date of the subject amendment and continuing in existence from that time through the date of the granting of the application.

20. Lastly, Petitioners contend that the clause, "effectively eliminated the natural function of the shoreline," is meaningless. This contention is legitimate. No seawall effectively eliminates the natural function of a shoreline, if "effectively" means "completely" or even "substantially completely." There is no fairly debatable definition of "effectively," "eliminate," "natural function," or "shoreline" that can assign meaning to this clause.

21. Tarpon Springs apparently intended to use the "effectively eliminated" clause to limit the applicability of the accessory-structure exception to uplands immediately landward of some, but not all, seawalls. However, the record offers no real

guidance as to the grounds on which Tarpon Springs would distinguish between these two classes of seawalls.

22. Undoubtedly, the natural functions of a shoreline can be substantially reduced by a seawall, but a seawall cannot eliminate all of the numerous natural functions of a shoreline. Two examples should suffice. Biologically, the installation of a seawall does not eliminate all of the organisms occupying the shoreline ecotone, including the seawall. Physiographically, the installation of a seawall does not eliminate the natural function of a shoreline as a geographic line of demarcation between uplands and open waters.

23. However, the shortcomings of the "effectively eliminated" clause do not render Conservation Policy 2 meaningless. This attempt to differentiate between functional and nonfunctional seawalls is merely an attempt to create a nonfunctional-seawall exception to the accessory-structure exception. If the "effectively eliminated" clause were disregarded as meaningless, Tarpon Springs could continue to apply the accessory-structure exception without regard to the functional status of the seawall. Although, as far as this case is concerned, Tarpon Springs may attempt to distinguish between those seawalls that it believes have effectively eliminated the natural function of the shoreline and those seawalls that have not done so, the remainder of this recommended order will

consider Conservation Policy 2 as though it would apply to all seawalls.

24. Crucial subsidiary issues in this case involve the effect of the amendment on various natural resources. Given the proximity of the area affected by the 30-foot aquatic lands setback to wetlands and open waters, the environmental issues primarily involve the effect of stormwater runoff on nearby wetlands and open waters.

25. In analyzing the stormwater runoff issue, the first issue involves the extent to which the accessory-structure exception may cause the conversion of pervious to impervious surface. However, the record fails to reveal two important pieces of information: the extent of the affected area that is presently pervious and the extent of this pervious area that will likely become impervious.

26. In considering the extent to which pervious area will likely become impervious, due to the accessory-structure exception, it is necessary to consider the types of accessory structures that landowners will likely construct. Although it is possible that the accessory-structure exception may facilitate paving, which obviously creates an impervious surface, swimming pools are the most likely structures to be installed under the accessory-structure exception, which prohibits roofed structures.

27. Where a swimming pool replaces pervious surfaces, the pool could adversely affect stormwater runoff. If one were able

to project the pervious surface area annually to be converted to swimming pools, possibly one could model progressively more intense storm events and durations (but not in excess of the design storm event) to determine whether (and, if so, to what extent) the typical swimming pool would receive runoff, rather than divert it around the pool, as is normal construction practice. Other calculations would need to consider the capacity of the typical pool to collect additional water prior to discharging the water and the input received by wetlands and open waters, in relevant storm events, directly from rainfall and, if applicable, indirectly from runoff.

28. The record contains no such analysis, nor is the issue so clearcut as to permit an inference that swimming pools, or other accessory structures, would, in storm events up to the design storm event, adversely affect the quality, quantity, rate, or hydroperiod of the runoff through nearby wetlands and into nearby open waters.

29. The absence of a demonstrated relationship between the accessory-structure exception and adverse environmental effects is independent of the area of land affected by the accessory-structure exception. The absence of such a demonstrated relationship is further underscored, though, by the relatively small area of uplands that would likely be converted annually to swimming pools. Although the record contains varying estimates

of the amount of land involved, Petitioners have failed to demonstrate that the area of affected land is more than minimal.

30. In terms of water quality, the record does not establish the net effect of converting the pervious portion of the affected area into pool areas. If grassy or planted, the pervious area may receive undisclosed infusions of insecticides, herbicides, and fertilizers. Undisclosed amounts of these substances may enter the nearby wetlands and open waters directly in runoff, leading to adverse environmental effects. The pool areas probably will receive undisclosed infusions of pool chemicals. Undisclosed amounts of these substances may enter the nearby wetlands and open waters directly in spillage and indirectly through evaporation and atmospheric deposit, leading to adverse environmental effects. The state of the record precludes findings, at a level of probability as to exclude fair debate, with respect to which land use would likely have a greater impact on water quality.

31. Other environmental issues raised by Petitioners are insubstantial. For instance, the record does not disclose the significance of the loss of assertedly contiguous wildlife corridor following the conversion into swimming pools of 15-foot wide strips of backyards running parallel to the shoreline starting at a distance of about 15 feet from the edge of the wetlands.

32. On these facts, Petitioners cannot show, to the exclusion of fair debate, that Tarpon Springs' planning decision to adopt the accessory-structure exception to the 30-foot setback is inconsistent with the various environmental and planning criteria of Chapters 163 and 9J-5.

33. This deferential evidentiary standard acknowledges the basically political or legislative nature of the process by which local governments plan land uses. In general, to overturn this political or legislative process, Petitioners must make a more definitive showing of environmental or planning harm caused by the adoption of the subject Plan amendment that will allow landowners to construct swimming pools in their backyards relatively close to open water. The absence of such a showing generally precludes a determination that the subject Plan amendment is inconsistent with the relevant criteria of Chapters 163 and 9J-5--such as supporting data and analysis, internal consistency, and other specific provisions.

34. For instance, on the basis of the present record, it is impossible to determine whether the conversion of pervious surfaces to swimming pools would be environmentally harmful, especially on the scale reasonably envisioned by Tarpon Springs. This state of the record precludes a finding that Petitioners have shown, to the exclusion of fair debate, the alleged environmental inconsistencies that they must show in order to prevail.

35. Petitioners have failed to prove to the exclusion of fair debate that the subject Plan amendment is inconsistent with Sections 163.3177(6)(g)1-5 and 10, and Rules 9J-5.012(3)(b)6 and 8 and (c)2, 3, and 7. These criteria require local governments to adopt plan provisions serving various planning, environmental, aesthetic, and public-safety criteria. No plan amendment addressing a single topic, like the accessory-structure exception, is required to address all of the criteria contained in Chapters 163 and 9J-5. It is possible that the effect of a plan amendment addressing a single topic may be to cause the plan, as amended, to fail to satisfy certain criteria. If so, the more likely challenge would be that the plan amendment is internally inconsistent with the various plan provisions that, prior to the amendment, satisfied the criteria in question.

36. Petitioners have failed to prove to the exclusion of fair debate that the subject Plan amendment is inconsistent with the criterion of Sections 163.3177(8) and (10)(e) and 163.3178(2)(b) and Rule 9J-5.005(2). As previously found, the data and analysis contained in the record would support a planning decision to adopt the accessory-structure exception, even without the functional-seawall exception, or to reject the accessory-structure exception.

37. Petitioners have failed to prove to the exclusion of fair debate that the subject Plan amendment is internally inconsistent with Conservation Goal 2 or Conservation Policies 2,

3, 6, 11, 14j, and 22. As already noted, there is no inconsistency between Conservation Policy 2, as amended, and Conservation Policy 3, which imposes the 15-foot wetlands buffer. To the extent that Petitioners have adequately raised an issue of internal inconsistency between the subject Plan amendment and Plan provisions governing the coastal high hazard area, the record does not support a finding that the accessory-structure exception would result in a material increase of either persons or property in the coastal high hazard area.

38. Petitioners also assert that the process by which Tarpon Springs adopted the subject amendment was inconsistent with the criterion of public participation. In challenging the process by which Tarpon Springs adopted the subject amendment, Petitioners assert that Tarpon Springs failed to comply with the Plan Administration Element, which Tarpon Springs adopted as part of its Plan. As described by Petitioner Constance S. Mack in her proposed recommended order, this element generally requires that Tarpon Springs notify all landowners affected by a proposed amendment, encourage public participation, and consider and respond in writing to comments from the public.

39. The record reveals an imperfect planning process. Tarpon Springs probably considered some erroneous data and analysis. Tarpon Springs ultimately adopted a Plan amendment containing the meaningless nonfunctional seawall exception to the accessory-structure exception. Petitioners correctly contend

that little real dialogue took place between them and Tarpon Springs officials during the planning process.

40. Communications between the two sides were less than ideal. By the end of the planning process, relations between the opposing parties deteriorated to the point that the Tarpon Springs planning director was, at times, treating legitimate attempts by Petitioners to participate in the planning process as unreasonable attempts at interference, and Petitioners were, at times, equating an unfavorable planning decision as a denial of public participation.

41. But Tarpon Springs nonetheless satisfied the minimum criteria involving public participation. Petitioner Constance S. Mack accurately concedes in her proposed recommended order that Tarpon Springs allowed public participation at a "minimal level." The record reveals that Tarpon Springs complied with all state law governing public participation.

42. Tarpon Springs also materially complied with all local law governing public participation. Any shortcomings in individual notice notwithstanding, published notice effectively put the community of Tarpon Springs on notice of the proposed amendment. The origin of this planning exercise was in a prior case that had been recently concluded. Tarpon Springs is a small community that, as evidenced by Petitioners' presentation of a petition with over 225 signatures protesting the proposed

amendment, was in fact well informed of the ongoing planning process involving accessory structures.

43. The record reflects that Tarpon Springs entertained Petitioners' objections, and the record supports the inference that Tarpon Springs considered these objections. In a perfect planning process, Tarpon Springs would have opened a dialogue with Petitioner Lisa Mack and responded to her carefully developed aesthetic vision of the future of Tarpon Springs' waterfront with an aesthetic vision of its own. In a better planning process, Tarpon Springs would have given more thoughtful consideration to Petitioners' objections to the language of the accessory-structure exception and eliminated some of the ambiguities present in the subject Plan amendment.

44. In the end, the planning process resulted in a decision by Tarpon Springs to allow waterfront landowners to build swimming pools in their backyards, relatively close to the water. Petitioners worked hard during the planning process to achieve a different result. However, these facts, together with the shortcomings in the planning process, do not describe a planning process that is inconsistent with the criterion of public participation.

45. Petitioners thus did not prove, to the exclusion of fair debate, that Tarpon Springs failed to give Petitioners reasonable notice of the proposed amendment and a reasonable opportunity to participate in the planning process.

46. Petitioners failed to prove to the exclusion of fair debate that the adoption process failed to satisfy the public-participation criteria of Sections 163.3181(1) and (2) and Rule 9J-5.004.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter. Sections 120.57(1) and 163.3184(9), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

10. Section 163.3184(1)(b) defines "in compliance" as:

consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern.

9. Section 163.3184(9) imposes the burden of proof on Petitioners to show, to the exclusion of fair debate, that the subject Plan amendment is not in compliance.

10. Sections 163.3177(2), (8), and (10)(e) provide in part:

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent, and the comprehensive plan shall be economically feasible.

(8) All elements of the comprehensive plan, whether mandatory or optional, shall be based

upon data appropriate to the element involved. . . .

(6)(g) For those units of local government identified in s. 380.24, a coastal management element, appropriately related to the particular requirements of paragraphs (d) and (e) and meeting the requirements of s. 163.3178(2) and (3). The coastal management element shall set forth the policies that shall guide the local government's decisions and program implementation with respect to the following objectives:

1. Maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

2. Continued existence of viable populations of all species of wildlife and marine life.

3. The orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

4. Avoidance of irreversible and irretrievable loss of coastal zone resources.

5. Ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development.

* * *

10. Preservation, including sensitive adaptive use of historic and archaeological resources.

(10)(e) It is the Legislature's intent that support data or summaries thereof shall not be subject to the compliance review process, but the Legislature intends that goals and policies be clearly based on appropriate data. The department may utilize support data or summaries thereof to aid in its determination of compliance and consistency. The Legislature intends that the department may evaluate the application of a methodology utilized in data collection or whether a particular methodology is professionally accepted. However, the department shall not evaluate whether one accepted methodology is

better than another. Chapter 9J-5, Florida Administrative Code, shall not be construed to require original data collection by local governments; however, local governments are not to be discouraged from utilizing original data so long as methodologies are professionally accepted.

11. Section 163.3178(2)(b) provides:

Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(b) An analysis of the environmental, socioeconomic, and fiscal impact of development and redevelopment proposed in the future land use plan, with required infrastructure to support this development or redevelopment, on the natural and historical resources of the coast and the plans and principles to be used to control development and redevelopment to eliminate or mitigate the adverse impacts on coastal wetlands; living marine resources; barrier islands, including beach and dune systems; unique wildlife habitat; historical and archaeological sites; and other fragile coastal resources.

12. Sections 163.3181(1) and (2) provide:

(1) 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.

(2) During consideration of the proposed plan or amendments thereto by the local planning agency or by the local governing

body, the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services, and consideration of and response to public comments.

13. Rule 9J-5.012(3)(b) addresses the coastal management element and provides in part:

(b) The element shall contain one or more specific objectives for each goal statement which address the requirements of Paragraph 163.3177(6)(g) and Section 163.3178, Florida Statutes, and which:

6. Direct population concentrations away from known or predicted coastal high-hazard areas;

8. Prepare post-disaster redevelopment plans which will reduce or eliminate the exposure of human life and public and private property to natural hazards[.]

14. Rule 9J-5.012(3)(c) provides:

(c) The [coastal management] element shall contain one or more policies for each objective and shall identify regulatory or management techniques for:

2. Restoration or enhancement of disturbed or degraded natural resources including beaches and dunes, estuaries, wetlands, and drainage systems; and programs to mitigate future disruptions or degradations;

3. General hazard mitigation including regulation of building practices, floodplains, beach and dune alteration, stormwater management, sanitary sewer and septic tanks, and land use to reduce the exposure of human life and public and private property to natural hazards; and incorporating the recommendations of the hazard mitigation annex of the local peacetime emergency plan and applicable existing interagency hazard mitigation reports. Incorporating recommendations from

interagency hazard mitigation reports shall be at the discretion of the local government;

7. Designating coastal high-hazard areas and limiting development in these areas[.]

15. For the reasons already stated, Petitioners have failed to prove to the exclusion of fair debate that the subject Plan amendment is not in compliance.

RECOMMENDATION

It is

RECOMMENDED that the Department of Community Affairs enter a final order determining that the subject Plan amendment is in compliance.

DONE AND ENTERED this 1st day of June, 1999, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of June, 1999.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.