

5-2-03

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

FILED
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ADMINISTRATIVE
HEARINGS

FRANCES Z. PARSONS,)
)
Petitioner)
)
v.)
)
PUTNAM COUNTY and)
DEPARTMENT OF COMMUNITY)
AFFAIRS)
)
Respondents,)
)
and)
)
FLORIDA RACING OF)
PUTNAM COUNTY, INC.,)
)
Intervenor)
_____)

No. DCA03-GM-115

02-1069GM
CAS-CWS

Division of Administrative
Hearings Case No. 02-1069GM

DETERMINATION OF NONCOMPLIANCE

This matter came before the Secretary of the Department of Community Affairs (the "Department") upon consideration of a Recommended Order issued on May 2, 2003 by the Division of Administrative Hearings (the "Division"). A copy of the Recommended Order is attached hereto as Exhibit A.

The issue in this proceeding is whether an amendment to the Future Land Use Map of the Putnam County Comprehensive Plan (the "Plan") is in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act (the "Act"). See § 163.3184(1)(b), Fla. Stat. (2002). Putnam County (the "County") approved the amendment by Ordinance No. 2001-33, and the Department published a Notice of Intent finding the amendment in compliance

with the Act. Frances Z. Parsons, the petitioner, filed a petition for a formal hearing before the Division to contest this determination, and on May 2, 2003 the Division issued its Recommended Order upholding her position. Counsel for the Department filed timely exceptions to the Recommended Order, and the County and Florida Racing of Putnam County, Inc. ("Florida Racing") have joined in the exceptions. Ms. Parsons has filed timely responses to the exceptions. For the reasons that follow, the Department recommends that the exceptions be denied, and that the Administration Commission enter a Final Order adopting the recommendations in the Recommended Order.

I. ROLE OF THE DEPARTMENT

Throughout the proceedings before the Division of Administrative Hearings the Department contended that the amendment was in compliance. After the issuance of the Recommended Order the Department assumed two functions in this matter.

The attorney and staff who advocated the position of the Department before the Division of Administrative Hearings continued to perform that function by reviewing the Recommended Order and filing Exceptions urging the Department to find the amendment in compliance. The other role is performed by the Secretary of the Department and agency staff who took no part in the formal proceedings, and who have reviewed the Record and the Recommended

Order in light of the Exceptions and the Responses.

Based on that review, the Secretary of the Department must either determine that the amendment is in compliance and enter a Final Order to that effect, or determine, consistent with the recommendation in the Recommended Order, that the amendment is not in compliance and submit the Recommended Order to the Administration Commission for final agency action. § 163.3184(9)(b), Fla. Stat. (2002).

II. RECOMMENDED RULINGS ON EXCEPTIONS

The subject of the amendment to the Plan is a tract of land owned by Florida Racing. At least by 1975 the land had been used off and on for automobile racing, and the improvements on the land were designed for that purpose, but this use of the property has been intermittent. The current Future Land Use Map classifies the tract as "Rural Residential." Under the proposed amendment the tract would be reclassified as "Commercial." As it stands, while the land may continue to be used for automobile races, the "Rural Residential" classification makes such activity a nonconforming use, which prohibits or limits its enlargement.

A. Recommended Ruling on Exception to Paragraphs 61 and 99 of the Recommended Order.

First, counsel for the Department takes exception to Paragraphs 61 and 99 of the Recommended Order, both of which state that

the "nonconforming use" provisions of the County Zoning Ordinance "apply to" the Future Land Use Map.¹ He argues that the Zoning Ordinance is intended to "implement" the Future Land Use Map, not merely "apply to" it. These exceptions should be denied. While it is correct to state that the Zoning Ordinance implements the Future Land Use Map, it may also "apply to" it, meaning that it relates to it. The relevance of the former to the latter is not open to debate. The exceptions urged by counsel to Paragraphs 61 and 99 of the Recommended Order are a semantical distinction without a difference. The exception to Paragraphs 61 and 99 of the Recommended Order should be denied.

B. Recommended Ruling on Exception to Paragraphs 103, 104 and 105 of the Recommended Order.

Counsel for the Department also takes exception to those portions of Paragraphs 103, 104, and 105 of the Recommended Order addressing the issues of whether the amendment would promote a non-conforming use and whether it would further a use incompatible with the character of the community. In support of this argument, he relies on findings in the Recommended Order suggesting that the original "Rural Residential" designation of the Florida Racing pro-

¹ Counsel for the Department is correct in his assertion that the "apply to" reference in Paragraph 61 is a conclusion of law, because it goes to the relationship between legal documents.

perty was inadvertent. See Recommended Order, ¶¶ 70, 71. Counsel states that the Division made a finding that the original "Rural Residential" designation had been based on incorrect information, and that the "Rural Residential" designation was a mistake. This is a misreading of the Recommended Order; it merely states that the Rural Residential designation "may be" a mistake because of the inaccurate information.² Id. While the Recommended Order mentions evidence supporting this interpretation, nowhere in the Recommended Order is there any finding that the "Rural Residential" classification was inadvertent, only an inference that it may have been. Id.

Second, counsel argues that the use of the Florida Racing property for automobile racing predates the residential use of the other properties in the vicinity owned or occupied by petitioner and other residents. While it is true that the Florida Racing property had been used for automobile racing from time to time before petitioner purchased her property, the argument ignores the findings in the Recommended Order that such use was intermittent. Recommended Order, ¶¶ 22, 23.

Third and last, counsel for the Department argues that the Future Land Use Element of the Plan contemplates the eventual "elim-

² Evidence was offered to prove that the property in question and several other properties in the vicinity were marked "woodlands" on the maps used to prepare the Future Land Use Map. Recommended Order, ¶¶ 70, 71.

ination of nonconforming uses" as one of its objectives, as do both the Act and the rules that implement it. Recommended Order, ¶¶ 59, 60; see § 163.3177(6)(a), Fla. Stat. (2002); Fla. Admin. Code R. 9J-5.006(3)(c)2 (2002). In essence, he argues that the nonconformity will go away if the amendment is allowed to take effect, because if the Florida Racing property is reclassified from "Rural Residential" to "Commercial" the use will no longer be a nonconforming one. This argument ignores the distinction between the "elimination or reduction of nonconforming uses" and the abrogation of the legal restrictions in the Future Land Use Map that make them nonconforming. What is more, it glosses over the findings in the Recommended Order that the proposed "Commercial" designation of the property would promote the enlargement of a use that is incompatible with the character of the community. See Recommended Order, ¶¶ 62, 77. Those findings are supported by competent substantial evidence, and must therefore stand.

The transformation of a nonconforming use into a "conforming" one by the contrivance of amending the Future Land Use Map may do away with the nonconformity, but it will not promote compatibility. On the contrary, the enlargement of the use made possible by reclassifying the Florida Racing property as "Commercial" would aggravate the present incompatibility of uses, in violation of the Act and its implementing rules. See § 163.3177(6)(a), Fla. Stat.

(2002); Fla. Admin. Code R. 9J-5.006(3)(c)2 (2002). The exceptions to Paragraphs 103, 104, and 105 of the Recommended Order should therefore be denied.

C. Recommended Ruling on Exception to Paragraphs 76 and 78 of the Recommended Order.

Last, counsel for the Department takes exception to portions of Paragraphs 76 and 78 of the Recommended Order, contending that these recitals are in substance conclusions of law. Paragraph 76 states that the amendment "will further and encourage the nonconforming use" Recommended Order, ¶ 76. Whether the amendment will have a specified effect on land use is an issue of fact, not one of law. This finding is supported by competent substantial evidence, and should not be disturbed. With reference to Paragraph 78, counsel merely disagrees with the finding therein that the amendment is not "in compliance" with the Act. Yet the findings discussed supra that the use of the Florida Racing property is not compatible with the character of the community lends substantial support to this finding. Therefore the exceptions to Paragraphs 76 and 78 of the Recommended Order should also be denied.

Therefore the Department submits the Recommended Order to the Administration Commission for final agency action on the Future Land Use Map Amendment adopted by Putnam County in Ordinance No. 2001-33.

Issued in Tallahassee, Florida this July 24, 2003.

FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Agency Clerk, receipt of which is hereby
acknowledged.

Paula P. Ford (7/24/03)
Paula P. Ford Date
Agency Clerk

Colleen M. Castille
COLLEEN M. CASTILLE
Secretary

Department of Community
Affairs, State of Florida
Sadowski Building
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32399-2100

All interested parties are hereby advised of their right to seek judicial review of this interlocutory determination in accordance with § 120.68(1), Fla. Stat. (2002), and Fla. R. App. P. 9.030(b)(1)(C) and 9.100(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Department, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100 and with the appropriate District Court of Appeal not later than thirty (30) days after this Final Order is filed with the Clerk of the Department. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by § 35.22(3), Fla. Stat. (2002).

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