STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANNA CURRENT, Petitioner, vs. TOWN OF JUPITER and DEPARTMENT OF COMMUNITY AFFAIRS, Respondents.	)	Case No. 03-0718GM

RECOMMENDED ORDER

On July 30, 2002, final administrative hearing was held in this case in Jupiter, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

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For Department of Community Affairs:

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STATEMENT OF THE ISSUE

The issue in this case is whether Comprehensive Plan Amendment 2002-02, adopted by the Town of Jupiter (Town) as Ordinance 62-02, is "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes.[1]

PRELIMINARY STATEMENT

After the Town's adoption of Amendment 2002-02 (Amendment), the Department of Community Affairs (DCA) gave notice of intent to find the amendment "in compliance." Petitioner, Anna Current, pro se, filed a Petition for Administrative Hearing (Petition) on March 28, 2003. DCA referred the matter to the Division of Administrative Hearings (DOAH). In accordance with the Joint Response to Initial Order, the case was set for hearing in Jupiter, Florida, on July 30, 2003.

At the conclusion of an Order on Motion to Compel and Motion for Protective Order entered on May 16, 2003, it was noted:

> [A]lthough the bulk of the Petition for Administrative Hearing in this case complains about the adequacy of the

> published notice of the transmittal and adoption hearings, the relevance of discovery on those issues is doubtful since consistency with notice requirements is not a compliance criterion under Section 163.3184(1)(b), Florida Statutes. See Emerald Lakes Residents' Ass'n, Inc. vs. Collier County and Dept. of Community Affairs, DOAH Case No. 02-3090GM, 2003 WL 329685, at *11-12 (Div. Admin. Hrgs. 2003), adopted with two minor exceptions not pertinent here in the Final Order entered by DCA on May 8, 2003.

On June 16, 2003, Petitioner filed a copy of a letter to counsel for the Town and DCA requesting "permission" to amend her Petition "by identifying the issues of disagreement as material fact, as well as making some minor corrections and statements to my Petition." The Town opposed "identifying issues of disagreement as material fact" as being "highly irregular"; DCA did not respond. Based on the filings, an Order Granting Leave to Amend for these purposes was entered on June 25, 2003.

On June 27, 2003, Petitioner filed her Amended Petition. In addition to the overall "not-in-incompliance" issue, Petitioner appeared to attempt to plead numerous sub-issues in the original Petition and in the Amended Petition, including: standing; public participation; publication of notice requirement for three public hearings (local planning agency, transmittal and adoption); the adequacy of the published notice of the transmittal and adoption hearings; home rule authority

of local governments to adopt planning and public participation programs that exceed minimum statutory and rule criteria; DCA's compliance review responsibilities; data and analysis; the relationship of the comprehensive plan to implementing land development regulations; annexation; findings of blight within community redevelopment agencies; and private property rights.

On July 14, 2003, the Town filed an exhibit list consisting of nine exhibits and reserving the right to add exhibits necessary for rebuttal or impeachment. On July 23, 2003, Petitioner filed her Corrected List of Exhibits, which included a general category of exhibits "listed by Respondents and/or necessary for rebuttal." On July 29, 2003, DCA and the Town filed a joint Prehearing Statement which listed their 12 joint exhibits, DCA's three exhibits, and the Town's five exhibits. The joint exhibits included an exhibit titled "Proof of Publication and Notice of Publication and Notice of Town's P&ZC Meeting of August 13, 2002," which was not included on any previous exhibit list. On July 29, 2003, Petitioner also filed a prehearing statement which was styled as a "Prehearing Stipulation." Petitioner's prehearing statement agreed to the admission of all of the Town's and DCA's exhibits.

At the formal hearing, Petitioner testified in her own behalf and sought to have admitted in evidence several exhibits from a book that contained 105 exhibits,[2] 103 individually

numbered (apparently not in any logical manner) in accordance with Petitioner's Corrected List of Exhibits filed on July 23, 2003, and all subsequently organized by tabs into nine categories reflecting the order in which Petitioner intended to refer to them during her testimony.[3] Several of the 105 exhibits (namely, those in tabs 8 and 9) were not offered. Several were received (most over objections on grounds of hearsay and relevance), namely, Petitioner's curriculum vita in tab 1, Petitioner's Exhibits 3, 6a, 13a, 18, 23, 68, 69, 72, and 78. Objections (mostly on grounds of relevance) to several of the offered exhibits were sustained (including all exhibits in Tab 5)--specifically, Petitioner's Exhibits 6, 14, 25, 29, 48-53, 55-57, 64-69, 81-85, 87-90, 92-95, 99, 102-109, and an unnumbered newspaper article in tab 7; but the rulings on the objections to Petitioner's Exhibits 55 and 56 are reconsidered, those objections are now overruled, and those exhibits are received. Ruling was reserved on objections to several exhibits offered--namely, 1a, 1b, 5b, 9, 10, 12, 25, 26, 30, 30a, 31, 34-41, 73-75, and 79; the objections are now overruled as to 1a, 5b, 9, 10, 12, 30, 30a, 31, 34-41, 73, and 75, which are now received[4]; objections as to the others are sustained.

The Town called one witness, David Kemp, who is the Town's Principal Long Range Planner. The Town also had Town Exhibits 1-11 admitted into evidence. DCA called its Senior Planner,

Joseph Addae-Mensa, as an expert witness in comprehensive planning. DCA had DCA Exhibits 1-3 admitted in evidence. Neither the Town nor DCA offered into evidence the exhibit titled "Proof of Publication and Notice of Public Hearing for Town's Planning and Zoning Commission Meeting held August 13, 2002," which was on the list of Respondents' Joint Exhibits in their joint Prehearing Statement.

After presentation of the evidence, DCA requested a transcript of the final hearing, and the parties were given ten days from the filing of the transcript in which to file proposed recommended orders (PROs). The transcript was filed on August 18, 2003. On August 25, 2003, counsel for Petitioner filed a notice of appearance as counsel of record. On August 27, 2003, counsel for Petitioner filed a request for extension of time to file PROs and to enlarge the page limit for PROs. The Town and DCA filed written responses in opposition to the request. On August 29, 2003, an Order Extending Time was entered extending the time for PROs to September 8, 2003, but denying the request to enlarge the page limit. The Town later requested an additional extension of one day due to facsimile transmission difficulties; neither DCA nor Petitioner opposed the extension.

On September 3, 2003, counsel for Petitioner filed an Expedited Motion to Request Official Recognition. A telephone

hearing was held on September 4, 2003. Based upon the motion and oral arguments, an Order on Official Recognition was entered on September 5, 2003, in which official recognition was granted as to some documents but denied as to others.

Separate PROs were filed by the Petitioner, Town and DCA. In Petitioner's PRO, all of the issues raised in the original and amended petitions were waived except the overall "not-in-compliance" issue, and the specific sub-issues of: standing; public participation; publication of notice requirements for three public hearings (land planning agency, transmittal and adoption); the adequacy of the published notice of the transmittal and adoption hearings; home rule authority of local governments to adopt planning and public participation programs that exceed minimum statutory and rule criteria; and DCA's compliance review responsibilities. All of the PROs were fully considered in preparing this Recommended Order.

The Town's PRO contained a request that DOAH reserve "jurisdiction to determine the entitlement to an award of attorney's fees and costs and to award reasonable attorney's fees and costs should it deem appropriate . . . ." On October 7, 2003, Petitioner filed a Notice of Service of Petitioner's Verified Motion for Sanctions against the Town of Jupiter under Section 57.105, Florida Statutes, and Request that DOAH not Issue the Recommended Order before October 30, 2003. Neither

the Town nor DCA responded to this last filing. At this time, based on the following Findings of Fact and Conclusions of Law, all requests relating to sanctions and assessment of attorneys' fees are denied.

FINDINGS OF FACT

The Parties

1. Petitioner, Anna Current, resides at property on the Jupiter River in the Town of Jupiter at 711 Ryan Road, Jupiter, Florida 33477.

2. The Town of Jupiter (Town) is a municipality of the State of Florida whose address is 210 Military Trail, Jupiter, Florida.

3. The Department of Community Affairs (DCA) is the state land planning agency with the duty to review comprehensive plan amendments pursuant to Sections 163.3164(20) and 163.3184.

The Amendment

4. Amendment 2002-02 (Amendment), which was adopted by the Town's Ordinance 62-02, consists of four text amendments, one amendment to the Transportation Map Series, and one amendment to the future land use map (FLUM) element.

5. The first text amendment amends the Transportation Element by adding Policy 2.2.6. Policy 2.2.6 requires updates to the Town's Bicycle Transportation Master Plan.

6. The second text amendment amends the text of the Conservation Element. Specifically, it amends Policy 1.2.5 to reference the June 2000 as opposed to the December 1985 version of the "Loxahatchee River National Wild and Scenic River Management Plan."

7. The third text amendment adds two new policies to the Intergovernmental Coordination Element of the Town's Comprehensive Plan. These policies reference and adopt certain parameters for the Western Corridor Interlocal Agreement, an interlocal agreement between the Town, Palm Beach County and Martin County.

8. The fourth text amendment amends certain tables related to Level of Service and Capacity Standards in the Public School Facilities Element.

9. The fifth change adds Figures 10 and 10a and amends Figures 5, 6 and 7 of the Transportation Map Series.

10. The sixth and final section of the Amendment changes the Future Land Use Map for the Town of Jupiter. Specifically, it redesignates 12.3 acres in Jupiter Community Park from the recreation land use category to the conservation land use category.

The Adoption Process

11. On August 13, 2002, the Town's Planning and Zoning Commission, acting as the local planning agency (LPA), held a

public hearing and recommended that the Jupiter Town Council approve seven separate comprehensive plan amendments. These amendments consisted of five text amendments, an amendment to the Transportation Map Series (with modifications), and a Future Land Use Map (FLUM) amendment.

12. Petitioner testified that this LPA public hearing was not advertised in advance. The Town's witness, David Kemp, who is the Town's Principal Long Range Planner, did not dispute Petitioner's testimony; instead, he testified that he did not recall whether this LPA public hearing was advertised.

13. There was documentary evidence that, on July 7, 2003, the Town Planner sent an e-mail message to the Town's Clerk informing her that, with regard to Petitioner's request for "proof of publication" of the advertisement for the LPA meeting on August 13, 2002, the Town Planner's staff had reviewed all relevant files and was unable to locate the requested public records.

14. There also was documentary evidence that the Town's Records and Archives Manager notified the Town's Clerk by e-mail on April 29, 2003, that Petitioner had requested a copy of the "proof of publication" of the advertisement for the LPA public hearing on August 13, 2002, and had been informed that no advertisement was necessary since it was a regular meeting of the LPA.

15. The minutes of the LPA's meeting on August 13, 2002, show that the six component parts being considered as part of the proposed Amendment 2002-02 were on the LPA's regular meeting consent agenda. The minutes indicate that two of the components were "pulled" from the consent agenda. The minutes also indicate that no one in attendance at the meeting spoke on the proposed amendments. The minutes do not reflect that the LPA or any of its members invited public participation before a vote was taken on the six components of the proposed amendments.

16. Neither the Town nor DCA introduced evidence of an advertisement for the LPA's meeting on August 13, 2002, notwithstanding their listing of proof of publication of the advertisement as a joint exhibit of the DCA and the Town in their Joint Prehearing Statement, and Petitioner's stipulation to its admissibility.

17. The minutes of the LPA meeting on August 13, 2002, reflect that Petitioner was not present during the consent agenda portion of the meeting. They indicate that she appeared later for the regular agenda portion of the meeting and spoke in favor of a site plan/special exception/PUD application being considered during that portion of the meeting.

18. On Tuesday, September 3, and Tuesday, September 17, 2002, the Jupiter Town Council held public hearings and

approved the transmittal of Ordinance 62-02, consisting of all seven of the proposed plan amendments recommended by the LPA, to DCA.

19. The transmittal public hearing was held on a weekday at least seven days after the advertisement for the public hearing, which appeared in the Palm Beach Post, a newspaper of general circulation in the Town, on August 25, 2002. The advertisement included the title of the proposed Ordinance 62-02, in bold:

> AN ORDINANCE OF THE TOWN . . . AMENDING ORDINANCE NO. 57-89, THE COMPREHENSIVE PLAN OF THE TOWN . . . ; AMENDING THE TEXT OF THE CONSERVATION, FUTURE LAND USE, INTERGOVERNMENTAL COORDINATION, AND PUBLIC SCHOOL FACILITIES ELEMENTS; AMENDING THE TEXT AND MAP SERIES OF THE TRANSPORTATION ELEMENT; PROVIDING FOR AN AMENDMENT TO THE FUTURE LAND USE ELEMENT TO CHANGE THE LAND USE DESIGNATION OF A 12.3 ACRE PROPERTY LOCATED IN THE NORTHERN PART OF THE TOWN'S COMMUNITY PARK AT 3377 CHURCH STREET FROM A RECREATION DESIGNATION TO A CONSERVATION DESIGNATION; . . . .

The advertisement also included a map showing the location of the 12.3-acre property.

20. At the transmittal hearing, the public was invited to comment, and three individuals offered public comments.

21. On September 26, 2002, DCA received the proposed amendments.

22. Although the Town requested that DCA not review the Amendment or issue an Objections, Recommendations, and Comments

Report (ORC report), Petitioner requested a review and ORC report, and DCA determined that a review and ORC report were necessary, even if not requested by Petitioner.

23. DCA conducted a review of the proposed amendments for consistency with the requirements of Chapter 163, Part II, Florida Statutes, Florida Administrative Code Rule 9J-5, the Treasure Coast Regional Planning Council Strategic Policy Plan, and Chapter 187, Florida Statutes (the State Comprehensive Plan), and issued an ORC report to the Town of Jupiter on November 27, 2002. The ORC report raised only one objection, specifically to a text amendment that would allow for increased densities in the Coastal High Hazard Area.

24. The Town Council held a public hearing on December 17, 2002, at which six of the seven proposed changes contemplated by the transmitted proposed amendments were adopted. (The Town did not adopt the amendment to which DCA has objected in the ORC report.)

25. This adoption hearing was held on a weekday at least five days after the advertisement for the public hearing appeared in the Palm Beach Post, a newspaper of general circulation in the Town. The advertising appeared on December 10, 2002. The advertisement included, in bold, the same title of the proposed Ordinance 62-02 as the transmittal hearing advertisement, except that reference to the text change to the

Future Land Use Element was omitted. The advertisement also included a map showing the location of the 12.3-acre property (as well as other properties affected by other ordinances being advertised at the same time).

26. At the adoption hearing, Petitioner offered written comments. There were no other comments or objections.

27. Petitioner attempted to prove that the Town failed to meet a statutory requirement to provide sign-forms for comprehensive plan amendment hearings. She proved that no sign-in forms were provided for the LPA hearing on August 13, 2002. She did not prove that no sign-in forms were provided for the transmittal hearings in September 2002 or for the adoption hearing in December 2002.

28. On December 23, 2002, DCA received the Town’s adopted Amendment 2002-02 for review. DCA conducted a review of adopted Amendment 2002-02 for consistency with the requirements of Chapter 163, Part II, Florida Statutes, Rule 9J-5, the Treasure Coast Regional Planning Council Strategic Policy Plan, and Chapter 187, Florida Statutes (the State Comprehensive Plan). Amendment 2002-02 was found to be "in compliance."

29. DCA's witness, Senior Planner, Dr. Joseph Addae-Mensa, testified that DCA's review of an adopted plan amendment includes verification that the local government held the required advertised transmittal and adoption hearings.

According to his testimony, this ordinarily is accomplished by a simple review to ascertain that the local government included the usual statement in its submission to DCA to the effect that the required advertised public hearings had been held. In this case, the Town's submission included such a statement, and DCA's review went no further.

Town's Public Participation and Advertising Requirements

30. Petitioner asserts that the Town's adoption of Resolution No. 58-87 on December 1, 1987, specified additional or more stringent public participation and notice procedures for the consideration and recommendation of comprehensive plans and amendments by the Town's LPA and for the adoption of such plans by the Town's governing body. However, Section 1 of the Resolution stated:

> The Town of Jupiter hereby adopts the following procedures [for the LPA and Town Council] to implement . . . [minimum] criteria as established by [DCA] . . . pending the enactment of permanent provisions by Ordinance, provided, however, that any failure by the Town to fully comply with the technical requirements hereof shall not be cause to invalidate the adoption of any Amendments to the Jupiter Comprehensive Plan which otherwise meet the requirements of law . . . .

In addition, on March 3, 1998, the Town's new home-rule charter became effective. It provided in Article VI that "procedures for the adoption of ordinances and resolutions for the Town of

Jupiter shall be as made and provided by the Florida Statutes, as may be hereafter amended and revised" and that the Town Council "may provide, by appropriate action, requirements for the adoption of ordinances and resolutions which are more stringent than those set forth in the Florida Statutes."

31. There was no evidence of any subsequent "appropriate action" to establish procedures that are "more stringent . . . than those set forth in the Florida Statutes."

32. Resolution 58-87 was neither repealed nor re-enacted after the effective date of the home-rule charter. However, it appears that the home-rule charter should be viewed as repealing or superseding Resolution 58-87. In any event, for purposes of this proceeding, as indicated, Resolution 58-87 did not add any compliance review criteria to the "requirements of law."

Data and Analysis for the Conservation Element

33. Petitioner attempted to challenge the text amendment to the Conservation Element of the Town's Comprehensive Plan. The Amended Petition states: "The restrictions placed on the Loxahatchee River Buffer were hastily prepared, flawed, and dubious in value. It was submitted without valid data and analysis."

34. It was determined at the hearing that Petitioner actually mistakenly was seeking to challenge either a

subsequent FLUM amendment considered by the Town Council in July, 2003, or land development regulations that were considered by the Town Council in February, 2003. These are not the changes to the Conservation Element of the Town's Comprehensive Plan adopted in Amendment 2002-02. The amendment at issue here merely changed a reference from the December 1985 version of the "Loxahatchee River National Wild and Scenic River Management Plan" to the June 2000 plan.

35. Submitted with the Amendment was data and analysis in the form of a staff report describing the procedural process used to adopt the amendment to the Conservation Element, staff analysis, and a narrative explanation of why this essentially housekeeping item was needed.

36. Petitioner presented no evidence at hearing that this minor change to the Conservation Element was submitted without adequate valid data and analysis.

Data and Analysis for the Transportation Element

37. Petitioner challenged the modification of Transportation Map Series figures 5, 6 and 7, and on the basis that they were supported by old data from 1999.

38. DCA did not raise this as an objection in their ORC report. The Florida Department of Transportation ("FDOT") did raise the issue of old data as an objection in its comment letter to DCA dated October 21, 2002. After receipt of the

comment letter, however, Town Staff contacted FDOT regarding the objection. Town Staff explained that the Town was completing a transportation study related to the Indiantown Road Corridor and indicated the Town's commitment to incorporating the data and analysis contained in the final transportation study into the Transportation Element in a subsequent round of comprehensive plan amendments.

39. At the final hearing, David Kemp, Principle Long Range Planner for the Town, testified that the Transportation Map Series amendments were to reflect only the possible alignment of a future roadway, that the Town had utilized the most current data based on the interlocal agreement and the alignments shown in the interlocal agreement, and that the Town had resolved the FDOT's concerns regarding the data.

40. Submitted with the Amendment was data and analysis in the form of a staff report describing the procedural process used to adopt the amendment to the Transportation Element and Map Series, staff analysis which responded to FDOT's objections, and a narrative explanation describing the changes and why they were needed. Petitioner did not prove beyond fair debate that the Transportation Map Series amendment was not supported by data and analysis.

Other Substantive Issues

41. Other issues Petitioner may have raised in her challenge to the compliance determination in this case either were dropped or were unfounded, some having been mistakenly directed to Town action other than the Amendment at issue in this case.

CONCLUSIONS OF LAW

42. Section 163.3184(1)(b) sets out the compliance criteria for this case:

> "In compliance" means consistent with the requirements of ss. 163.3177, 163.31776, when a local government adopts an educational facilities element, 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.

43. Absent a statutory directive to the contrary, the burden of proof generally is on the party (or parties) asserting the affirmative of the issue in an administrative proceeding. Young v. Dept. of Community Affairs, 625 So. 2d 831 (Fla. 1993); Balino v. Dept. of Health, etc., 348 So. 2d 349 (Fla. 1st DCA 1977). In this case, DCA and the Town are asserting the affirmative of the issue: that the Amendment is in compliance, i.e., that it is "consistent" with the

requirements listed in Section 163.3184(1)(a). However, Section 163.3184(9)(a) alters the general rule.

44. Since DCA issued notice of intent to find the Amendment to be "in compliance," Section 163.3184(9)(a) provides that the Amendment "shall be determined to be in compliance if the local government's determination of compliance is fairly debatable." This language has been interpreted consistently as shifting the burden of proof to the party seeking to establish noncompliance.

45. It was held in Martin v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997):

> The fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety. *See* B & H Travel Corp. v. State Dep't of Community Affairs, 602 So. 2d 1362 (Fla. 1st DCA 1992). In other words, "[a]n ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity." City of Miami Beach v. Lachman, 71 So. 2d 148, 152 (Fla. 1953). The procedural requirements inuring to a quasi-judicial proceeding are distinct from those inuring to a legislative proceeding. *See generally* City Envtl. Servs. Landfill, Inc. v. Holmes County, 677 So. 2d 1327 (Fla. 1st DCA 1996). However, we do point out that even with the deferential review of legislative action afforded by the fairly debatable rule, local government action still must be in accord with the procedures required by chapter 163, part II, Florida

> Statutes, and local ordinances. *Cf.* David v. City of Dunedin, 473 So. 2d 304 (Fla. 2d DCA 1985) (finding null and void an ordinance enacted in violation of the notice provisions of the relevant statutes). An ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity.

46. In this case, Petitioner's primary contentions are that the Amendment is not consistent with notice requirements for LPA hearings under Section 163.3174(4)(a),[5] and for adoption and transmittal hearings under Section 163.3184(15),[6] and with public participation requirements under Section 163.3181[7] and Rule 9J-5.004. Of these, only Rule 9J-5.004 is listed as a compliance criterion under Section 163.3184(1)(b).

47. Rule 9J-5.004 states:

> (1) The local governing body and the local planning agency shall adopt procedures to provide for and encourage public participation in the planning process, including consideration of amendments to the comprehensive plan and evaluation and appraisal reports.
> (2) The procedures shall include the following:
> (a) Provisions to assure that real property owners are put on notice, through advertisement in a newspaper of general circulation in the area or other method adopted by the local government, of official actions that will affect the use of their property;
> (b) Provisions for notice to keep the general public informed;

(c) Provisions to assure that there are opportunities for the public to provide written comments;
(d) Provisions to assure that the required public hearings are held; and
(e) Provisions to assure the consideration of and response to public comments.
(3) Local governments are encouraged to make executive summaries of comprehensive plans available to the general public and should, while the planning process is ongoing, release information at regular intervals to keep its citizenry apprised of planning activities.

48. Rule 9J-5.004 implements Section 163.3181, which states in pertinent part:

(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.

49. The Town's Amendment does not purport to adopt procedures to "provide for and encourage public participation in the planning process" (Rule 9J-5.004) or 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" (Section 163.3181). Such procedures already are in place. Essentially, Petitioner contends that the Town did not follow its procedures and, in so doing, that its actions were not consistent with the public participation requirements in Section 163.3181 and in Rule 9J-5.004 when it adopted the Amendment--specifically, by not giving notice of the LPA hearing on August 13, 2002, and by giving insufficient notice of the transmittal and adoption hearings in September and December 2002.[8]

50. Although Section 163.3181 and Rule 9J-5.004 both appear to direct local governments to adopt procedures, not compel conduct in accordance with the procedures, Petitioner contends that plan amendments are not "in compliance" if the local government does not follow the adopted procedures (and minimum procedural requirements reflected in the statute and rule) in amending its comprehensive plan. In making this argument, Petitioner relies on the case of Austin, et al. v. Dept. of Community Affairs, et al., DOAH Case Nos. 88-6338GM

and 89-0291GM, 1989 WL 645182 (DOAH June 2, 1989; DCA Aug. 20, 1990, and Sept. 29, 1989).

51. In Austin, DCA reviewed the entirety of the Comprehensive Plan of the City of Cocoa under the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes (1985), commonly referred to as the Growth Management Act, and found the City's Plan to be "in compliance." In the Recommended Order (RO) entered on June 2, 1989, on the petition filed by Austin, et al., challenging DCA's "compliance" determination, findings were made regarding preparation and transmittal of the proposed plan (including LPA meetings and public notices given), DCA's review and ORC report on the proposed plan (including, in RO Finding 82, a finding as to a statement in the ORC report that "the City's public participation procedures [were] in violation of Rule 9J-5.004(2)(c) and (e)" because they lacked "provisions to assure that the public has opportunities to provide written comments and would receive responses to their comments"), and the City's review of the ORC report and adoption of the City's Plan (including meetings and public notices given). The RO also included the following "Ultimate Findings as to Public Participation":

> 183. The public participated in the comprehensive planning process to the fullest extent possible. The City Council adopted procedures to provide effective

public participation, including notice to real property owners of all official action affecting the use of their property.

184. Any deficiency in the procedures is immaterial. The Planning and Zoning Board duly discharged its responsibilities as the local planning agency under the Act. The City Council and Planning and Zoning Board amply advertised their many public hearings and provided reasonable opportunity for written comments and open discussion. Comments from the public appear to have received fair consideration. The City disseminated proposals and other information as broadly as possible, although certain materials were available at times only to staff and not the City Council, Planning and Zoning Board, or public.

185. The City was confronted with a substantial task involving the identification, consideration, and resolution of complex technical and legal questions. The City prudently delegated much of the work to City staff and outside consultants. The Act generates severe time pressures, especially on the local government, which has only 60 days to digest the ORC and adopt a plan. Once the City received the ORC, about half of the 60 days was spent by the staff and outside consultants in drafting proposed revisions and responses.

186. Neither City Council or the Planning and Zoning Board could realistically commence public meetings until the members had reviewed the work of the consultants and staff. Critical land use decisions such as those involved in the adoption of a comprehensive plan are politically sensitive. The land use decisions in this case generated considerable controversy in the community. Members of the City Council or the Planning and Zoning Board could not reasonably be expected to commence public

> meetings before they were aware of what revisions and responses were being proposed by their experts.
>
> 187. The greatest shortcoming in the public participation process involved the ongoing proposed changes to the Future Land Use Map and the inability or unwillingness of the City to disseminate in a timely manner updated maps reflecting these proposed changes. Broader and more timely dissemination of the proposed changes would have facilitated more careful consideration of the effects of redesignating the uses of large parcels of land.
>
> 188. However, the real target of the frustrations expressed with the public participation process is with the resulting land use decisions, not the process itself. Even in light of the shortcomings with respect to the revisions to the Future Land Use Map, the public participated in the process to the fullest extent possible under the circumstances described above.

Austin, supra at *35-36. The RO also included the following Conclusions of Law on "Public Participation":

> 242. It is the intent of the Legislature that the "public participate in the comprehensive planning process to the fullest extent possible." Section 163.3181(1), Florida Statutes. Local planning agencies and local governments must "adopt procedures" to provide for "effective public participation" in the planning process and to provide real property owners with notice of all official actions that will regulate the use of their property. Id. The procedures must provide for:
>
> > broad dissemination of the proposal and the 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.

Section 163.3181(2).

243. The reference in the above-cited statute to public hearings is to the requirements of Section 163.3184(15), Florida Statutes. This statute requires that a majority of the governing body approve the transmittal of a proposed plan and the adoption of a plan. The adoption of a plan must be by ordinance.

Section 163.3184(15)(a).

244. The statute requires that the governing body hold at least two advertised public hearings on the proposed plan. The first hearing must be held at the transmittal stage. The hearing must take place on a weekday about seven days after the day that the first advertisement was published. The intention to hold and advertise a second hearing must be announced at the first hearing. The second hearing must be held at the adoption stage. The hearing must take place on a weekday about five days after the day that the second advertisement was published.

Section 163.3184(15)(b)1. and 2.

245. The advertisements described in the preceding paragraph must state the date, time, place, and subject matter of the meeting and the locations at which the public may inspect the proposed plan or plan. The advertisements must also state that interested persons may appear at the meeting and be heard regarding the transmittal or adoption of the proposed plan or plan. Id.

246. If the proposed plan or plan changes the permitted use of land or land use categories, the advertisements must be no less than one-quarter size in a standard or tabloid-size newspaper with a headline in no smaller than 18-point type. The

> advertisement may not appear in the portion of the newspaper devoted to classifieds and legal notices. The newspaper must be of general paid circulation in the county and of general interest and readership in the community. If possible, the newspaper should be published at least five days a week. The advertisement must contain a geographic location map with major street names indicated. The advertisement must announce at the heading: "NOTICE OF CHANGE OF LAND USE." The introductory paragraphs of the advertisement must be substantially in the same form as language set forth in the statute.
>
> 247. The City Council and Planning and Zoning Board complied with the above-cited law regarding public participation and public hearings. Although the Planning and Zoning Board evidently did not formally adopt procedures for public participation, the Board conducted its hearings in a manner consistent with the requirements of the Act concerning public participation.

Id. at *44-45. The Recommendation in the RO was to find the City's Plan not "in compliance," but not for any reasons relating to public participation.

52. After receipt of the RO in Austin, DCA determined that the City's Plan was not "in compliance" and, under Section 163.3184(9)(b), Florida Statutes (1989), forwarded the RO to the Administration Commission (AC) for entry of a final order. On September 29, 1989, the AC entered an Amended Final Order. Id. at *55-63. The Amended Final Order included the following findings:

The commission adopts the hearing officer's Ultimate Findings Numbers 185 through 232, except as noted in the following paragraphs.

4. In this proceeding, the commission is asked to reach a threshold determination concerning public participation in the local government comprehensive planning process. At the outset, the commission notes that communication at the draft and proposed plan stages can be as essential to the outcome of an effective plan as the formal adoption procedures. Furthermore, citizens should be afforded timely access and education concerning the growth management decisions entrusted to elected and appointed officials.

In considering the requirements of section 163.3181, F.S., the commission notes legislative intent that the public participate in the comprehensive planning process to the fullest extent possible. Section 163.3181(2) specifies minimum requirements for local planning agencies and local governmental units to adopt procedures that "provide for broad dissemination of the proposals and alternatives, opportunities for written comments, public hearings . . . , provisions for open discussion, communication programs, information services, and consideration of and response to public comments."

The commission also notes section 163.3184(1)(b) of the act, which reads as follows:

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

> Furthermore, the commission acknowledges that Chapter 9J-5.004, F.A.C., reflects significant elements of section 163.3181 of the act concerning public participation in the comprehensive planning process. On balance, the commission concludes that the act and DCA Rule 9J-5 include public participation as an essential supporting element in preparing and adopting a local government comprehensive plan pursuant to Chapter 163, Part II, F.S., and are within the scope of compliance review under section 163.3184, F.S.
>
> Based on the conclusion of law that public participation may be raised within a compliance review proceeding pursuant to section 163.3184, F.S., the commission adopts the Ultimate Findings of the hearing officer's Recommended Order with respect to this subject, except as noted below:
> (a) The commission does not adopt the first sentence of Ultimate Finding Number 185, on page 71 of the Recommended Order.
> (b) The commission does not adopt the first sentence of Ultimate Finding Number 186, on pages 71-72 of the Recommended Order.
> (c) The commission does not adopt Ultimate Finding Number 190 on page 73 of the Recommended Order.
>
> The commission concludes that the record indicates that the City of Cocoa made a good faith effort to comply with the intent established in section 163.3181, F.S. and Chapter 9J-5.004, F.A.C., and adopts the hearing officer's findings as they pertain to the minimum requirements that may be addressed in this Section 163.3184 compliance review.

Id. at *56-57.

53. Based on the AC's findings and conclusions, it is difficult to understand why the AC chose not to adopt the

listed findings.[9] It also is difficult to ascertain what exactly the AC was making part of compliance review when it concluded that "the act and DCA Rule 9J-5 include public participation as an essential supporting element in preparing and adopting a local government comprehensive plan pursuant to Chapter 163, Part II, F.S., and are within the scope of compliance review under section 163.3184, F.S."--consistency with the requirement that local government's adopt procedures for ensuring public participation, or consistency with a requirement that certain procedures be followed.

54. Notwithstanding findings in the RO as to the public participation that occurred in the process of adoption of the City's Plan for initial compliance review by DCA, the RO's Conclusions of Law seemed to limit public participation compliance review to a determination as to whether the City had adopted transmittal and adoption procedures in compliance with Rule 9J-5.004 and Sections 163.3181 and 163.3184(15), Florida Statutes (Supp. 1988). The AC's conclusions of law seemed to be adding the LPA procedures to the scope of this compliance review. Notwithstanding this apparently limited scope of compliance review, the AC may have concurred with the RO's Ultimate Finding 184 that "[a]ny deficiency in the procedures is immaterial"[10] and did concur with the RO's Conclusion of Law 247[11] that, "[a]though the Planning and Zoning Board [the LPA]

evidently did not formally adopt procedures for public participation, the Board conducted its hearings in a manner consistent with the requirements of the Act concerning public participation." Id. at *45. Perhaps telling, the AC added to the stipulated remedial amendments needed to bring the City's Plan into compliance:

> 52. The city shall also review, revise, and adopt its public participation procedures, guidelines and practices to ensure public participation to the fullest extent possible in compliance with Rule 9J-5, F.A.C. and Chapter 163, Part II, F.S.

Id. at *62. In addition, the AC granted certain undisclosed exceptions[12] filed by Austin, et al.:

> to the extent reflected in the remedial actions specified in this order. While the commission will not second-guess the detailed application of local adoption procedures, it does find that the minimum procedural requirements specified in the act and DCA Rule 9J-5 may be reviewed and enforced through the compliance review process established in section 163.3184, F.S. (Emphasis added.)

Id. at *58. Although not clear, it appears from the foregoing that it was the intent of the AC to review the local government's adoption procedures for consistency with the requirement that they are sufficient to ensure public participation, and not to review for consistency with a requirement that certain procedures be followed. Petitioner has not cited any AC or DCA precedent making it clear that

Austin should be interpreted as reviewing for consistency with a requirement that certain procedures be followed.

55. In contrast to Rule 9J-5.004 and Section 163.3181, Rule 9J-5.005(8) did require local governments to follow certain procedures for ensuring public participation in the preparation and adoption of government's adoption procedures, until its repeal in 2001. Specifically, former Rule 9J-5.005(8) stated in relevant part:

> (b) The comprehensive plan or element shall be prepared in accordance with Section 163.3174 and Subsection 163.3167(4), Florida Statutes, relating to local planning agencies. Proposed plans, elements, portions thereof and amendments shall be considered at a public hearing with due public notice by the local planning agency prior to making its recommendation to the governing body pursuant to Subsection 163.3167(4) and Section 163.3174, Florida Statutes.
> (c) The comprehensive plan, element or amendment shall be considered and adopted in accordance with the procedures relating to public participation adopted by the governing body and the local planning agency pursuant to Section 163.3181, Florida Statutes, and Rule 9J-5.004 of this chapter. The local government shall submit with its initial transmittal, pursuant to Subsection 163.3167(2), Florida Statutes, and subsequent transmittals pursuant to Section 163.3191, Florida Statutes, a copy of the procedures for public participation that have been adopted by the local planning agency and the governing body.
> * * *
> (e) . . . The comprehensive plan, elements and amendments shall be adopted by ordinance and only after the public hearings required by Paragraph [sic]

> 163.3184(15)(b), Florida Statutes, have been conducted after the notices required by Paragraphs [sic] 163.3184(15)(b) and (c), Florida Statutes. Upon adoption the local government shall transmit to the Department a copy of the ordinance and the required notices.

These subsections appear to have been the basis for consideration of the issue not only in Austin but also in several other early cases. See, e.g., Robert J. Starr et al., v. Department of Community Affairs et al., Case Nos. 98-0449GM, 98-0701GM, 98-0702GM, and 98-1634GM, 2000 WL 248379, *49 (DOAH Feb. 11, 2000; DCA May 16, 2000); Minette Benson et al. v. City of Miami Beach et al., Case No. 89-6804GM, 1990 WL 749702, *2 (DOAH Sept. 24, 1990; DCA Nov. 12, 1990), rev'd, 591 So. 2d 942 (Fla. 3d DCA 1991); Dept. of Community Affairs, et al. v. City of Islandia, DOAH Case No. 89-1508GM, 1990 WL 749353, *28 (DOAH March 27, 1990; DCA June 20, 1990).

56. As indicated, former Rule 9J-5.005(8) was repealed in 2001. See Volume 26, Number 42, Oct. 20, 2000, at 4838, Florida Administrative Weekly; Volume 27, Number 8, Feb. 23, 2001, at 975, Florida Administrative Weekly. Subsequent decisions appear to give effect to the repeal by eliminating compliance review for consistency with a requirement that certain procedures be followed. See Emerald Lakes Residents' Ass'n, Inc. v. Collier County and Dept. of Community Affairs, DOAH Case No. 02-3090GM, 2003 WL 329685, *12 (DOAH Feb. 10,

2003; DCA May 9, 2003). See also Alessi, et al. v. Wakulla County, et al., DOAH Case No. 03-0052GM, Order entered February 4, 2003, and Order entered April 7, 2003.

57. Notwithstanding the foregoing, Petitioner maintains that plan amendments still should be reviewed for consistency with the requirements of former Rule 9J-5.008. The basis for Petitioner's argument is that the notice of proposed rulemaking for the rule's repeal stated that "redundant provisions" were being repealed. Petitioner argues that, if the repealed language was redundant, consistency with a requirement that local governments follow statutory, rule, and local procedures for ensuring public participation in the preparation and adoption of government's adoption procedures must still be a part of compliance review. But the meaning and significance of the language in the notice of proposed rulemaking is not clear; and it cannot be concluded that consistency with a requirement that local governments follow statutory, rule, and local procedures for ensuring public participation in the preparation and adoption of government's adoption procedures remains a part of compliance review, notwithstanding the repeal of former Rule 9J-5.005(8).

58. Notwithstanding the repeal of former Rule 9J-5.005(8), and apparent absence of any other statutory and rule authority, DCA nonetheless suggests that some limited

compliance review of a local government's adoption process is still appropriate. According to the evidence in this case, DCA's review is limited to whether the transmittal and adoption hearings took place as required by Section 163.3184(15). Assuming such a review is appropriate, Petitioner did not prove beyond fair debate that the requirements of Section 163.3184(15) were not met.

59. Section 163.3184(15) provides in pertinent part:

> (a) . . . For the purposes of transmitting or adopting a comprehensive plan or plan amendment, the notice requirements in chapters 125 and 166 are superseded by this subsection, except as provided in this part.
> (b) The local governing body shall hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment as follows:
> 1. The first public hearing shall be held at the transmittal stage pursuant to subsection (3) It shall be held on a weekday at least 7 days after the day that the first advertisement is published.
> 2. The second public hearing shall be held at the adoption stage pursuant to subsection (7). It shall be held on a weekday at least 5 days after the day that the second advertisement is published.
> (c) The local government shall provide a sign-in form at the transmittal hearing and at the adoption hearing for persons to provide their names and mailing addresses. The sign-in form must advise that any person providing the requested information will receive a courtesy informational statement concerning publications of the state land planning agency's notice of intent. The local government shall add to the sign-in form the name and address of any person who submits written comments concerning the proposed plan or plan amendment during the time period between the commencement of the transmittal hearing and the end of the adoption hearing. It is the responsibility of the person completing the form or providing written comments to accurately, completely, and legibly provide all information needed in order to receive the courtesy informational statement.
> (d) The agency shall provide a model sign-in form for providing the list to the agency which may be used by the local government to satisfy the requirements of this subsection.

> (e) If the proposed comprehensive plan or plan amendment changes the actual list of permitted, conditional, or prohibited uses within a future land use category or changes the actual future land use map designation of a parcel or parcels of land, the required advertisements shall be in the format prescribed by s. 125.66(4)(b)2. for a county or by s. 166.041(3)(c)2.b. for a municipality.

Section 166.041(3)(c)2.b. provides:

> (c) . . . Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:
>
> * * *
>
> 2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:
>
> * * *
>
> b. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality,

> not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the municipality is published less than 5 days a week. The advertisement shall be in substantially the following form:
>
> NOTICE OF (TYPE OF) CHANGE
>
> The (name of local governmental unit) proposes to adopt the following ordinance: (title of the ordinance) ___.
>
> A public hearing on the ordinance will be held on (date and time) at (meeting place) .
>
> Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area.

60. Petitioner contended that the notice requirements in paragraphs (a), (b), and (e) of Section 163.3184(15), were not met because it was not permissible to combine the various plan amendments into a single enacting ordinance, as done by the Town in this case, and because the advertisements for the transmittal and adoption hearings did not adequately identify the subject of the amendments. But the evidence was contrary

to Petitioner's positions, and Petitioner has cited no authority to support her positions.

61. Petitioner also contended that the Town failed to meet the sign-in form requirements of paragraphs (c) and (d) of Section 163.3184(15). But, as found, Petitioner failed to prove this contention.

62. As found, Petitioner submitted written comment on the proposed amendment and was in attendance at the adoption hearing. In addition, her participation established that, even if there were deficiencies in the advertisements, she suffered no prejudice as a result.

63. If following required transmittal and adoption procedures is a compliance criterion, as it was before the repeal of former Rule 9J-5.008 in 2001, prejudice to the petitioner logically would not be an issue. See, e.g., Benson v. City of Miami Beach Department of Community Affairs, 591 So. 2d 942 (Fla. 3d DCA 1991)(no consideration of prejudice in opinion where published notice of public hearing did not meet statutory requirement for county-wide notice); Dept. of Community Affairs, et al. v. City of Islandia, supra (no consideration of prejudice in a case where petitioners were DCA and an adjoining local government not required to comment, recommend, or object in order to be an "affected person" with standing under Section 163.3184(1)(a)). But see Edmond J. Gong

and Dana L. Gong v. Dept. of Community Affairs and City of Hialeah, DOAH Case No. 94-3506GM, 1994 WL 1027737, *7 (DOAH Oct. 11, 1994; DCA Nov. 29, 1994)(actions of City and DCA held not to be a nullity for failure to give statutory notice, where there was no showing of prejudice). In cases where a local government's alleged failure to follow various procedures for public participation (including alleged inadequate public notice) has been considered, for whatever reason, since the repeal of Rule 9J-5.008, the party alleging the failure was required to establish resulting prejudice in order to prevail. See Emerald Lakes Residents' Ass'n, Inc. v. Collier County and Dept. of Community Affairs, supra; Sutterfield et al. v. Department of Community Affairs et al., Case No. 02-1630GM, 2002 WL 31125197, *19-20 (DOAH Sept. 16, 2002; DCA Nov. 14, 2002). See also City of Jacksonville v. Huffman, 764 So. 2d 695 (Fla. 1st DCA 2000)(waiver of procedural error on permit for construction in historic district); Schumacher v. Town of Jupiter, 643 So. 2d 8 (Fla. 4th DCA 1994), rev. den., 654 So. 2d 919 (Fla. 1995)(person challenging statutory notice requirements who read notice, attended hearing, and fully participated in zoning amendment proceeding was estopped from asserting a defect in the notice).

Data and Analysis Requirements

64. Data and analysis requirements for the adoption of comprehensive plan amendments are set out in Rule 9J-5.005(2).

65. Rule 9J-5.005(2)(a) states in pertinent part:

> All goals, objectives, policies, standards, findings and conclusions within the comprehensive plan and its support documents, and within plan amendments and their support documents, shall be based upon relevant and appropriate data and the analyses applicable to each element. To be based upon data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.

66. The adoption of a reference to the year 2000 version of the "Loxahatchee River National Wild and Scenic River Management Plan," updated a reference to the 1985 version. Since the Loxahatchee Plan was previously incorporated into the Town's comprehensive plan, reference to the updated plan was an appropriate reaction indicated by the data available on the issue at the time of adoption and was appropriately found "in compliance."

67. Petitioner has not demonstrated beyond fair debate that the amendment to the Conservation Element was submitted

without adequate data and analysis and therefore not "in compliance," as defined in Section 163.3184(1)(b).

68. The adoption of the amendments to the Transportation Map Series were based on the interlocal agreement between the Town, Palm Beach County, and Martin County regarding the construction of a road known as the "Western Corridor." Amendment and adoption of these maps are necessary to reflect the alignment of the roadway through the Town and to maintain consistency within the comprehensive plan by reflecting changes to the Transportation Element based on changes to the Intergovernmental Coordination Element. The modification and addition of maps in the Transportation Map Series was an appropriate reaction indicated by the data available on the issue at the time of adoption and was appropriately found to be "in compliance."

69. Petitioner has not demonstrated beyond fair debate that the Amendment regarding the Transportation element was submitted based on inadequate data and analysis and therefore not "in compliance," as defined in Section 163.3184(1)(b).

RECOMMENDATION

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

RECOMMENDED that DCA enter a final order finding the Town's Amendment 2002-02 to be "in compliance."

DONE AND ENTERED this 24th day of October, 2003, in Tallahassee, Leon County, Florida.

S

_____
J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of October, 2002.

ENDNOTES

[1]/ Unless otherwise noted, Sections refer to Sections of the 2002 codification of the Florida Statutes, and Rules refer to the current codification of the Florida Administrative Code.

[2]/ In addition to the general category of exhibits "listed by Respondents and/or necessary for rebuttal," Petitioner listed a total of 109 numbered exhibits, but six of these were stricken from the list.

[3]/ Petitioner's pro se method of organizing her exhibits, as well as her manner of presenting her case, made it difficult to follow her presentation, find and use her exhibits, and make an accurate record of objections and rulings.

[4]/ As reflected in the Conclusions of Law, several of these exhibits relate to issues ultimately held to be outside the scope of compliance review; however, they were received in evidence for purposes of setting the factual predicate for the arguments on the scope of compliance review.

[5]/ Since the evidence was that no public notice was given, the details of the notice requirements under this statute, which are defined in Section 163.3164(18), need not be set out.

[6]/ Quoted in Conclusion 59, infra.

[7]/ Quoted in Conclusion 48, infra.

[8]/ As found, neither the Town's Resolution 58-87 nor its home-rule charter adds anything to the compliance review requirements for purposes of this proceeding.

[9]/ Ultimate Finding 190 does not pertain to public participation, and the AC's previous findings and conclusions do not explain its action with respect to Ultimate Findings 185 and 186. Based on the AC's preceding findings and conclusions, it would have been more logical for the AC to have declined to adopt the first sentences of Ultimate Findings 183 and 184.

[10]/ As indicated in Endnote 9, supra, the AC may actually have intended to reject this Ultimate Finding, which would have made more sense in light of other findings and conclusions.

[11]/ The AC refers to adopted conclusions of law by the numbers 1-66. However, it appears that, prior to preservation in Westlaw (and on the DOAH website), the numbering of Conclusions of Law in the RO was changed to conform with the subsequent DOAH practice of numbering conclusions of law sequentially, starting with the number following the number of the last finding of fact. Since there were 226 findings in the RO, the Conclusion of Law 247 falls within the range of conclusions of law adopted by the AC.

[12]/ These exceptions are not revealed in the published decision, only the rulings.

COPIES FURNISHED:

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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 should be filed with the agency that will issue the final order in this case.