

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

COLLIER COUNTY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-1048GM  
 )  
 DEPARTMENT OF COMMUNITY )  
 AFFAIRS and CITY OF NAPLES, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, Donald R. Alexander, on June 9 and 10, 2004, in Naples, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether the City of Naples' plan amendment adopted by Ordinance No. 03-10305 on December 17, 2003, is not in compliance for the reasons alleged in Collier County's Petition for Administrative Hearing (Petition).

PRELIMINARY STATEMENT

This matter began on December 17, 2003, when Respondent, City of Naples (City), adopted Ordinance No. 03-10305, which added a new Policy 1-10 in the Transportation Element of the City's Comprehensive Plan (Plan). The new amendment restricts construction of vehicle road overpasses or flyovers in the City.

On February 13, 2004, Respondent, Department of Community Affairs (Department), published its Notice of Intent To Find the City of Naples Comprehensive Plan Amendment In Compliance (Notice). On March 5, 2004, Petitioner, Collier County (County), filed its Petition with the Department alleging that the amendment was not in compliance on the grounds that the amendment was not supported by adequate data and analyses, that the amendment was inconsistent with other provisions in the Plan, and that the amendment violated Section 163.3177(4)(a), Florida Statutes (2003).<sup>1</sup> The Petition was forwarded to the Division of

Administrative Hearings on March 25, 2004, with a request that an administrative law judge conduct a hearing.

By Notice of Hearing dated April 2, 2004, a final hearing was scheduled on June 9 and 10, 2004, in Naples, Florida. Prior to the final hearing, numerous procedural and discovery issues arose, and their disposition is found in the Orders resolving those disputes or in the Transcript of the final hearing.

At the final hearing, the County presented the testimony of David E. Crawford, a planner with the Southwest Florida Regional Planning Council (Council); Norman Feder, County Transportation Administrator; Dan Trescott, a planner with the Council; Donald L. Scott, County Director of Transportation-Planning and accepted as an expert; Peter Van Arsdale, a former member of the City Council and Metropolitan Planning Commission (MPO) and accepted as an expert; Gregg Strakalusa, County Director of Engineering and Construction Management; David Muntean, Jr., a professional engineer and accepted as an expert; Patricia S. Campbell, a senior transportation planner and accepted as an expert; and W. Stanley Litsinger, County Comprehensive Planning Director and accepted as an expert. Also, it offered County Exhibits 1, 2, 6-8, 11-17, 20, 28, and 44-54. All were received except Exhibits 13 and 44, on which a ruling was reserved. Exhibits 13 and 44 are hereby received in evidence. Exhibits 45-49 are the depositions of Bernard Piawah, Charles Gauthier, Ron Lee, Ron Wallace, and George Archibald, respectively. The City presented

the testimony of Laura K. Spurgeon, a Planner II, and George Archibald, Public Works Engineering Manager and accepted as an expert. Also, it offered City Exhibits 1a and b, 2a-w, 3, 4, and 6-13. All were received in evidence except Exhibits 5, 11, and 12, on which a ruling was reserved. Those Exhibits are received in evidence. The Department's two witnesses, Bernard Piawah and Charles Gauthier, appeared by deposition (County Exhibits 45 and 46). On July 23, 2004, the undersigned granted an unopposed request by the County that City Exhibit 14 (the deposition of Ron Lee) and County Exhibit 55 (an updated version of a consultant's report) be admitted into evidence.

The Transcript of the hearing (two volumes) was filed on June 24, 2004. By agreement of the parties, the time for filing proposed findings of fact and conclusions of law was extended to August 2, 2004. The same were timely filed, and they have been considered in the preparation of this Recommended Order. (On August 9, 2004, the City filed a Notice of Scrivener's Errors in Proposed Findings of Fact and Conclusions of Law.) Finally, on August 5, 2004, the County filed a Motion to Strike the City of Naples' Proposed Recommended Order or Alternatively to Strike Portions of the Proposed Recommended Order (Motion). Responses in opposition to the Motion were filed by the City and Department on August 12, 2004. The Motion is hereby denied.

## FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

### A. Background

1. In 2003, the City began the planning process to adopt an amendment to its Plan which would restrict, but not prohibit, the construction of traffic overpasses or flyovers within the City. Under the process in place for adopting amendments, a City planner initially drafts a proposed amendment; the draft amendment is presented in the form of a recommendation to the City Planning Advisory Board (Board); and the Board then forwards a recommendation to the City Council for a final decision.

2. On July 2, 2003, the City staff submitted a Report to the Board recommending that a new Policy 1-10 be added to the Plan's Transportation Element, which read as follows:

Due to impacts on traffic and aesthetics, the City shall not permit construction of road overpasses or flyovers in favor of alternative planning solutions that will improve the long-term traffic circulation patterns in the City.

3. On July 9, 2003, the Board considered the Report and recommended that the language in the amendment be slightly amended by adding the word "vehicle" before the word "road" to clarify the kind of overpass addressed by the amendment. The Board then submitted a recommendation to the City Council that it adopt the following amendment:

Due to impacts on traffic and aesthetics, the City shall not permit construction of vehicle road overpasses or flyovers in favor of alternative planning solutions that will improve the long-term traffic circulation patterns in the City.

4. On October 8, 2003, the proposed amendment was transmitted to the Department for its preliminary review. After reviewing the proposal, on December 12, 2003, the Department issued a two-page letter which served as its Objections, Recommendations, and Comments (ORC) Report. In the ORC, the Department offered three comments regarding the proposed amendment: that the City had not "defined the circumstances under which an overpass or flyover would be allowed by the City"; that "issues of this nature are best addressed through the use of existing intergovernmental coordination"; and that the City was encouraged to resolve this matter through the MPO and other intergovernmental coordination avenues available to the City and County. However, there were no objections to the language in the amendment. (A comment in the ORC is advisory in nature, while an objection represents an assertion by the Department that there are inconsistencies in the proposed amendment.)

5. On November 17 and 21, 2004, the Council submitted letters to the City indicating that it "had no adverse comments" to the amendment. After the City adopted the amendment, though, the Council decided to revise its recommendation to the Department and suggested that the amendment be slightly modified

by adding language requiring the City to consider alternative planning solutions "in a timely manner." However, the Council supports the overall substance of the amendment.

6. On December 17, 2003, the City approved the amendment without further changes. The amendment was then forwarded to the Department for its compliance determination. On February 13, 2004, the Department published its Notice determining that the amendment was in compliance.

7. Since 1989, and at a cost of several million dollars, the County has been involved in the planning process for infrastructure needed to alleviate traffic demands at or near the intersection of Golden Gate Parkway and Airport-Pulling Road. One quadrant of the intersection lies within the City; the remaining portion of the intersection lies within the County. During this process, and based on recommendations by outside consultants, the County determined that a vehicle overpass (known as the Golden Gate Overpass) would be the most effective traffic planning solution.

8. Alleging that the new amendment was designed solely for the purpose of prohibiting the construction of that overpass, on March 5, 2004, the County filed its Petition challenging the new amendment. As set forth in the parties' Joint Pre-Hearing Stipulations, the County raises three broad grounds for finding the amendment not in compliance: that the amendment is not based on the best available data and analyses, as required by Florida

Administrative Code Rule 9J-5.005(2); that the amendment is inconsistent with other provisions within the Plan; and that the amendment lacks coordination with the County's Plan, in violation of Section 163.3177(4), Florida Statutes. The undersigned has rejected as untimely a contention raised for the first time by the County in its Proposed Recommended Order that the amendment is vague and lacks meaningful and predictable standards.<sup>2</sup> Finally, because the Department and the City both contest the standing of the County to bring this action, that issue must also be resolved.

B. Standing

9. To demonstrate standing, the County, as an adjoining local government, must prove that the plan amendment "will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within [its] jurisdiction." § 163.3184(1)(a), Fla. Stat. Therefore, the County must prove that the plan amendment prohibits the construction of the Golden Gate Overpass and that this prohibition will result in the substantial adverse impacts described in the statute.

10. On its face, the amendment restricts, but does not prohibit, the construction of vehicle overpasses within the City. That is, the amendment merely states a preference on the part of the City for "alternative planning solutions" before a vehicle overpass may be permitted. This general expression of policy



preferences cannot be read as a blanket prohibition on overpasses, or a specific direction to deny any request by the County that the overpass be constructed.

11. If the amendment is found to be in compliance, the precise manner in which it will be implemented is unknown. These details, however, are not the subject of this dispute. In any event, until the City actually implements the amendment and makes a decision that another alternative planning solution exists, there can be no "substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment," as required by the statute.

12. In support of its standing claim, the County argues that if the amendment is found to be in compliance, the City may implement the amendment in an arbitrary manner. Assuming this to be a legitimate concern, there can still be no "substantial impacts" until a decision is made by the City.

13. The County also points out that in a meeting of the City Council on April 21, 2004, or four months after the amendment was adopted, the City determined that the amendment applies to the Golden Gate Overpass, and that as of that date, the County had still not "satisfied the requirement" that it explore alternative planning solutions. The City did not vote, however, to prohibit the overpass. That post-adoption determination by the City in no way alters the finding that the

amendment will not produce substantial impacts on the increased need for publicly-funded infrastructure. As noted above, these impacts, if any, will not occur until the amendment is implemented in a manner adverse to the County's interests.

14. Accordingly, the evidence supports a finding that the County is not an affected person and lacks standing to file this challenge.<sup>3</sup> Although this ruling is dispositive of the case, for the purpose of rendering a complete Recommended Order, the County's compliance contentions will be addressed below.

### C. The Plan Amendment

15. The goal of the Transportation Element of the Plan is as follows:

Provide an efficient, balanced, attractive, and safe multimodal system of transportation facilities in accordance with recognized safety standards, various land use demands and environmental considerations unique to the City of Naples.

16. Under the goal, the Plan contains eight adopted objectives. Objective 1 reads as follows:

Protect the character of existing and future residential neighborhoods by maintaining the integrity of the City's identified collector and arterial circulation plan and, where possible, manage traffic flow to protect the residential neighborhoods.

17. Prior to the enactment of the amendment, the Plan contained nine adopted policies to implement this objective. These policies further Objective 1 by requiring that the City ensure the protection of neighborhoods when assessing

transportation improvements. For example, street improvements should be evaluated to "protect residential neighborhoods" (Policy 1-1); the City shall "require landscape buffers between residential neighborhoods and arterials" (Policy 1-2); and the City should enhance flow on major roads to divert traffic from "neighborhood collectors and local streets" (Policy 1-4).

18. The amendment adds a tenth policy under Objective 1 to read as follows:

Due to impacts on traffic and aesthetics, the City shall not permit construction of vehicle road overpasses or flyovers in favor of alternative planning solutions that will improve the long-term traffic circulation patterns in the City.

19. The new policy is intended to apply to road improvements throughout the City, and not just the Golden Gate Overpass, and would require that "feasible alternative planning solutions" be explored before a vehicle road overpass is permitted. The policy is not intended to act as an absolute prohibition on overpasses in general or any one specific overpass, but only "restricts construction of vehicle road overpasses . . . in the City" if other alternative planning solutions exist. By requiring this type of analysis, the City can further Objective 1 by "protect[ing] residential neighborhoods."

20. Golden Gate Parkway is an east-west arterial roadway that traverses both the City and the County. The County is

responsible for maintaining and improving the entire length of Golden Gate Parkway, including that portion lying within the City. Airport-Pulling Road is a north-south thoroughfare that traverses both the City and the County. The two roads intersect around two miles north of the Naples Municipal Airport in the northeastern corner of the City. Three of the four quadrants of the intersection are within the County, while the fourth is within the City.

D. Data and Analysis

21. In the context of the requirement that plan amendments be supported by data and analyses requirement, there are two types of amendments: mandatory and aspirational. A mandatory amendment is one that is required by Chapter 163, Florida Statutes, or Florida Administrative Code Chapter 9J-5. Conversely, an aspirational or qualitative amendment is not required by statute or rule. The most common example of an aspirational amendment is one which prohibits skyscrapers or imposes a height restriction on structures within the boundaries of a local government.

22. The County contends that the plan amendment is not supported by data and analyses, as required by Florida Administrative Code Rule 9J-5.005(2). That rule requires that all policies "shall be based upon relevant and appropriate data and the analyses applicable to each element."

23. When the amendment package was transmitted to the Department on October 8, 2003, it contained no supporting data and analyses. The City's submission, however, was consistent with the Department's long-standing view, supported by the evidence here, that if an amendment is aspirational in nature, it does not require supporting data and analyses. This is because an aspirational amendment is merely a policy choice by a local government which has a limited or cosmetic effect. Or as stated by Department witness Gauthier, Policy 1-10 is "conditional in nature . . . and it would rely on . . . some subsequent analysis and decision-making [by the City]." In other words, "the scenarios and what direction the policy take will really depend on activities and assessments by the City, which happen later." Therefore, it requires little, if any, data and analyses.

24. Here, the restriction on overpasses is an aspirational amendment, and it represents a policy choice on the part of the City that expresses disfavor for overpasses and flyovers and a preference for at-grade improvements. The amendment does not excuse the City from complying with any of the substantive planning requirements imposed by Chapter 163, Florida Statutes, or Florida Administrative Code Chapter 9J-5. The only change accomplished by the amendment is to favor at-grade improvements as the primary way to address level of service standards and access points and other substantive planning requirements. It also represents the City's primary choice when planning for

transportation needs with other regional and state entities. Given the nature of the amendment, there is no need for "appropriate and relevant data and analysis" within the meaning of the rule.

25. Notwithstanding the fact that no data and analyses were required, at the time the amendment was adopted, the City had numerous traffic studies indicating that there are often alternatives to overpasses.<sup>4</sup> Information was also available which indicated that overpasses can have negative aesthetic impacts on neighborhoods; that overpasses can cause traffic impacts by moving congestion from one intersection to another; and that improvements which improve long-term vehicle flow in the City will also impact the County. Besides the foregoing data, the City had received citizens' concerns about the traffic impacts of intersections and their desire to seek alternatives to overpasses before authorizing one to be built. Assuming arguendo that data are required to support an aspirational amendment, it is at least fairly debatable that the amendment is supported by adequate data and analyses.

E. Consistency With Other Plan Provisions

26. The County next contends that the amendment is inconsistent with portions of the Vision 2005 Work Plan (Vision 2005); certain introductory language in the Future Land Use Element (FLUE); Objective 6 and Policies 2-1, 5-4, and 8-1 of the Transportation Element; Policies 4-5 and 5-8 of the Capital

Improvements Element; the Transportation Element Support Document; and the Goal, Objective 1, and Policies 1-2 and 1-6 of the Intergovernmental Coordination Element. All of the cited provisions generally relate to the City's responsibility to provide a safe and efficient transportation system, or they encourage the City to cooperate with the County and other entities in the planning process. For the following reasons, it is at least fairly debatable that Policy 1-10 does not conflict with the above-cited portions of the Plan.

a. Vision 2005 Work Plan

27. Vision 2005 (which was adopted in 1998) is a part of the Plan which identifies "desired future conditions through vision statements," and a "series of action plans [eleven strategies] to carry out this vision." The County contends that the amendment conflicts with Goal 3 and Objective 3-6 of Vision 2005. The cited goal provides that the "City should enhance its cooperative relationship with the County," while Objective 3-6 states that one of the City's objectives is to have "positive opportunities for the County to enhance its motivation to cooperate with the City."

28. The County has failed to show that Policy 1-10 conflicts with the goal or objective in any respect. Therefore, the County's contention is found to be without merit.

b. Future Land Use Element

29. The County next contends that the amendment conflicts with certain language found in the Introduction portion of the FLUE. The precatory portion of the FLUE describes the general purposes of the FLUE, the principal implementation mechanisms, and the broad functions of the goals, objectives, and policies contained therein. There are, however, no goals, objectives, or policies within the Introduction itself.

30. The County asserts that the amendment conflicts with that part of the Introduction which states that the goals, objectives, and policies within the FLUE should provide guidance for future growth and redevelopment based on the Vision 2005 strategy to "strengthen City and County cooperative planning programs." Assuming that consistency with this language is required under Section 163.3184(1)(b), Florida Statutes, there is nothing in Policy 1-10 that conflicts with this vision.

c. Transportation Element

31. The County also contends that the amendment conflicts with Objective 6 and Policies 2-1 and 5-4 of this element. Objective 6 requires that the City "[a]ssure intergovernmental consistency by an annual review of plans and programs with Collier County . . . ." Nothing in Policy 1-10 interferes with this objective.

32. Policy 2-1 requires that, "based on a system wide study," the City "develop an efficient transportation network



that encourages the diversion of traffic from local streets to collectors and arterials." Because Policy 1-10 will require system-wide studies to determine whether overpasses, or some other alternative, are the appropriate choice, the amendment is consistent with Policy 2-1.

33. Policy 5-4 provides that

[w]ith the cooperation of Collier County's Department of Transportation, [the City shall] limit direct access onto Goodlette-Frank Road from abutting properties by requiring properties fronting other roadways to use those for access where it is a safe alternative to access on Goodlette-Frank Road.

34. This policy routes traffic from properties abutting Goodlette-Frank Road onto other roads. Because the County has failed to show any logical nexus between Policy 5-4 and Policy 1-10, it is found that Policy 5-4 has no application to this controversy.

35. Finally, Policy 8-1 requires that the City provide support data and analyses to the MPO as necessary to assist in the development of a public transportation system. Because this policy deals with public or mass transportation such as buses, and not vehicle transportation, Policy 8-1 has no application here.

d. Transportation Element Support Document

36. The City next contends that the amendment conflicts with certain language found in the Transportation Element Support

Document. That document is attached to the Plan and is designed to fulfill the Transportation Element data and analyses requirements of Florida Administrative Code Rule 9J-5.019. Among other things, the lengthy analyses of the data contains language stating that the intersection for the Golden Gate Overpass is "under Collier County's jurisdiction"; that there will be "increased traffic" in the area of the overpass; that a new interchange to be constructed at Interstate 75 and Golden Gate Parkway (several miles east of the proposed overpass) will generate "heavy traffic"; and that the City "should enhance its cooperative relationship with the County." Assuming that consistency with a support document is required in a compliance determination, the County has not demonstrated that Policy 1-10 conflicts with the cited language.

e. Capital Improvements Element

37. The County also contends that the amendment conflicts with Policies 4-5 and 5-8 in the Capital Improvements Element of the Plan. Policy 4-5 requires the City to

Revise the Capital Improvements Program in the future to include projects and programs listed in the Comprehensive Plan which are in addition to those needed to maintain level of service standards or to correct deficiencies if not correctly funded. (Emphasis added).

38. The County contends that the amendment conflicts with the underscored portion of the policy. However, this policy simply requires revisions to the City's capital improvements

program to maintain level of service or to correct deficiencies. There is nothing in Policy 1-10 that interferes with the ability of the City to revise its program in the future to satisfy those concerns.

39. Policy 5-8 generally requires that the City coordinate its capital improvements program with all other agencies that provide public facilities to the City and that it participate in the plans of any agency providing public facilities within the City. However, Policy 1-10 does not prevent the City from coordinating its projects with other state agencies, or prevent the City from participating in the plans of other agencies or local governments that provide public facilities.

f. Intergovernmental Coordination Element

40. The County further contends that the amendment conflicts with the Intergovernmental Coordination Element in three respects. First, it argues that because the amendment is inconsistent with the Collier County Plan, it is inconsistent with Objective 1 of this element. That objective requires in part that the City's Plan "should be consistent with the plans of Collier County, the School Board, and other units of government without regulatory authority over land use."

41. Nothing in Policy 1-10 prevents the development of these mechanisms, nor does anything in the policy prevent addressing how the Plan impacts adjacent jurisdictions.

42. Policy 1-2 of the same element requires that the City monitor the County's comprehensive planning efforts to ensure coordination and reduce conflicts between the two local governments. Nothing in Policy 1-10 interferes with those monitoring requirements.

43. Policy 1-6 requires the development of joint planning agreements and land use studies between the County and the City to increase the consistency of land use within two miles of the City/County line. Again, nothing in the challenged policy conflicts with this requirement.

F. Lack of Intergovernmental Coordination

44. Finally, the County contends that because Policy 1-10 "is incompatible with the overpass designated in the Collier County Growth Management Plan, the 1989 interlocal agreement, [and] the Grey Oaks PUD, DRI, and DO," it violates Section 163.31771(4)(a), Florida Statutes. That statute essentially requires that there be "coordination" between the City's Plan and the comprehensive plan of the County (and other adjoining local governments, if any).

45. The City provided a copy of the amendment to the County and received no objections. Moreover, nothing in Policy 1-10 changes either the objectives of the City to coordinate its Plan or the policies that define the relationship of the Plan to the plans of other local governments. While the City and the County may disagree over whether an overpass should be built, there is

no evidence that Policy 1-10 affects the intergovernmental relations structures established by the two comprehensive plans. Stated differently, Policy 1-10 does not alter or remove objectives and policies in the Plan regarding coordination with the comprehensive plans of adjoining governments, nor does it conflict with the County's Plan, the MPO, or interlocal agreements of adjoining governments.

46. In the same vein, the County argues that the City cannot express a preference for at-grade improvements without violating intergovernmental coordination because the overpass is in the MPO and the County's Plan. The inclusion of a project in the MPO and County's Plan, however, does not compel the City to accede to the project or risk inconsistency with the intergovernmental coordination provisions of its own Plan. See Department of Community Affairs et al. v. City of Fort Myers, Case No. 89-2159GM, 1992 WL 880106 at \*31 (DOAH Jan. 7, 1992, Admin. Comm. April 8, 1992).

G. Other Contentions

47. All other contentions raised by the County not discussed herein or in the Endnotes have been considered and rejected as being without merit.

CONCLUSIONS OF LAW

48. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto

pursuant to Sections 120.569, 120.57(1), and 163.3184(9), Florida Statutes.

49. To prove standing as an adjoining local government, the County must demonstrate that "the plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction."<sup>5</sup> § 163.3184(1)(a), Fla. Stat. Because the amendment does not prohibit the construction of the Golden Gate Overpass, but merely states a preference on the part of the City for "alternative planning solutions" before a vehicle overpass can be built, the substantial impacts contemplated by the statute cannot occur until the amendment is implemented. Therefore, the County lacks standing to file this action.<sup>6</sup>

50. Under the statutory scheme in place, if a plan amendment has been found to be in compliance by the Department, as it was here, an affected person must prove beyond fair debate that the amendment is not in compliance. § 163.3184(9), Fla. Stat. This means that "if reasonable persons could differ as to its propriety," a plan amendment must be upheld. Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997). See also Martin County v. Section 28 Partnership, Ltd., 772 So. 2d 616, 621 (Fla. 4th DCA 2000)(where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the County's decision is anything but 'fairly debatable'").

51. "'In compliance' means consistent with the requirements of ss. 163.3177, 163.31776, . . . 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 . . . ." § 163.3184(1)(b), Fla. Stat.

52. For the reasons previously found, the more persuasive evidence supports a conclusion that the County has failed to prove beyond fair debate that the plan amendment is not in compliance. Because the County's determination of compliance is fairly debatable, it is concluded that the plan amendment is in compliance. § 163.3184(9)(a), Fla. Stat.

53. Finally, in its Proposed Recommended Order, the City has requested sanctions under Section 163.3184(12), Florida Statutes, on the ground that the County filed its Petition without making "reasonable inquiry," as required by the statute. More specifically, the City contends that there is ample evidence in the record that the County should have known at the time of the filing of its Petition, and certainly by the time discovery was concluded, that it could not prevail under the fairly debatable standard. Because this issue must be disposed of by a separate final order, jurisdiction is retained in this matter for the limited purpose of determining (through an evidentiary hearing, if necessary) whether sanctions are warranted, and if so, the nature and amount of those sanctions. That determination

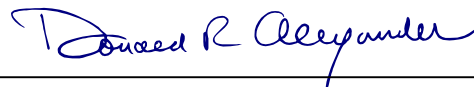
will be made after the Department enters its final order in this matter.

RECOMMENDATION

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

RECOMMENDED that the Department of Community Affairs enter a final order determining that the plan amendment adopted by Ordinance No. 03-2003-45 on December 17, 2003, is in compliance.

DONE AND ENTERED this 24th day of August, 2004, in Tallahassee, Leon County, Florida.



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DONALD R. ALEXANDER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of August, 2004.

ENDNOTES

- 1/ All future references are to Florida Statutes (2003).
- 2/ In paragraph 40 of its Petition, the County does allege that the amendment ". . . is too open ended and difficult to define . . . ." but does so in the context of its broader allegation that the amendment is not supported by adequate data and analyses. Even if this allegation is sufficient to raise the issue, however, the assertion is found to be without merit.



3/ At best, the County has only demonstrated that the amendment may cause a slight delay in the construction of the overpass, assuming that an overpass represents the best planning solution. This short delay would probably occur when the City considers the alternative planning solutions presented by the County. Because the overpass has been in the planning stages since 1989, a delay of a few months will not produce the "substantial impacts" contemplated by the statute.

4/ While the County points out that all of its studies support the construction of an overpass, the need for an overpass and the need for adequate data and analyses are two separate issues. Therefore, when the amendment was adopted, it was not necessary for the City to analyze those studies to determine what was the best long-term solution for traffic congestion.

5/ The County contends that the intersection has been called out for special treatment and protection by virtue of Policy 6.5 of the County's Transportation Element. However, Policy 6-5 merely notes that the Golden Gate Overpass, the widening of Golden Gate Parkway, and the new Interstate 75 interchange are in the MPO's Long Range Plan and requires that the County ensure that "the three projects mentioned above will be fully coordinated in timing and design." A general commitment to coordinate does not equate to a designation of the area for "special protection or special treatment." In any event, having an area designated for special treatment or protection does not automatically convey standing on a local government unless the amendment will cause substantial impacts on that area. Here, there are none.

6/ Even the County has expressed uncertainty about its standing. For example, in its Petition, the County has alleged that "the City's amendment could have a substantial adverse impact on the increased need for infrastructure that must be funded by Collier County." (Emphasis added) In the Statement of the Issue portion of its Proposed Recommended Order, the County has defined the issue in the case in the following manner: "Assuming the County has standing to file the Petition, the issue, then, is whether . . . Policy 1-10 . . . is in compliance." Finally, in the Conclusions of Law portion of the same filing, the County contends that if the amendment is implemented, "the amendment could be used as a means to halt or frustrate the implementation of the County's planned construction of an overpass and accordingly will substantially impact the County's need for publicly funded infrastructure." (Emphasis added).

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.