STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

CITY OF WEST PALM BEACH; SEMINOLE IMPROVEMENT DISTRICT; CALLERY-JUDGE GROVE, LLP; NATHANIEL ROBERTS; INDIAN TRAIL IMPROVEMENT DISTRICT; and VILLAGE OF WELLINGTON,

Petitioners,

v.

DEPARTMENT OF COMMUNITY AFFAIRS and PALM BEACH COUNTY,

Respondents.
_____/

DCA Docket No. 04-1-NOI-5001-(A)-(I)

DOAH Case Nos. 04-4336GM
04-4337GM
04-4650GM

DRA closed

FINAL ORDER

This matter was considered by the Secretary of the Department of Community Affairs ("the Department") following receipt and consideration of a Recommended Order issued by an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings. A copy of the Recommended Order is attached hereto as Exhibit A.

BACKGROUND

This matter involves a challenge to comprehensive plan amendments adopted by Palm Beach County Ordinance No. 2004-026, hereinafter referred to as "the Plan Amendments."

The Department published a notice of intent to find the Plan Amendments "in compliance," as defined in §163.3184(1)(b), FLA. STAT. (2003), and the Petitioners challenged the Plan Amendments, as authorized by §163.3184(9)(a), FLA. STAT. (2004). A formal hearing was conducted by ALJ Donald R. Alexander of the Division of Administrative Hearings. Following the hearing, the ALJ submitted his Recommended Order to the Department. The ALJ recommended that the Department enter a final order

determining that the Plan Amendments are in compliance.

ROLE OF THE DEPARTMENT

Throughout the pendency of the formal administrative proceedings, the Department's litigation staff contended that the Plan Amendments are in compliance. After the ALJ issued his Recommended Order, the Department assumed two functions in this matter.

The attorney and staff who advocated the Department's position throughout the formal proceedings continued to perform that function. The other role is performed by the Secretary of the Department and agency staff who took no part in the formal proceedings, and who have reviewed the entire record and the Recommended Order in light of the Exceptions. Based upon that review, the Secretary of the Department must either enter a final order consistent with the ALJ's recommendations finding the Plan Amendments in compliance, or determine that the Plan Amendments are not in compliance and submit the Recommended Order to the Administration Commission for final agency action. § 163.3184(9)(b), FLA. STAT. (2004).

Having reviewed the entire record, the Secretary accepts the recommendation of the Administrative Law Judge as to the disposition of this case.

STANDARD OF REVIEW OF RECOMMENDED ORDER AND EXCEPTIONS

The Administrative Procedure Act contemplates that the Department will adopt the Recommended Order except under certain limited circumstances. The Department has only limited authority to reject or modify the ALJ's findings of fact.

> Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.
>
> Section 120.57(1)(l), FLA. STAT. (2004)

The Department cannot reweigh the evidence considered by the ALJ, and cannot reject

findings of fact made by the ALJ if those findings of fact are supported by competent substantial evidence in the record. *Heifetz v. Department of Business Regulation*, 475 So.2d 1277 (Fla. 1st DCA 1985); and *Bay County School Board v. Bryan*, 679 So.2d 1246 (Fla. 1st DCA 1996), construing a provision substantially similar to Section 120.57(1)(l), Fla. Stat. (2003). See also, *Pillsbury v. Dept. of Health and Rehabilitative Services*, 744 So. 2d 1040 (Fla. 2d DCA 1999).

The Department may reject or modify the ALJ's conclusions of law or interpretation of administrative rules, but only those,

> . . . conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.
>
> Section 120.57(1)(l), FLA. STAT. (2004)

The label assigned to a statement is not dispositive as to whether it is a conclusion of law or a finding of fact. *Kinney v. Department of State*, 501 So.2d 1277 (Fla. 5th DCA 1987). Conclusions of law, even though stated in the findings of fact section of a recommended order, may be considered under the same standard as any other conclusion of law.

SUMMARY OF THE AMENDMENTS AND CHALLENGE

The Plan Amendments add Objective 3.1 to Palm Beach County's Future Land Use Element and delete Future Land Use Element Policy 3.4-c and Capital Improvement Element Policy 1.5-c to clarify water and wastewater service delivery policies for the Rural Tier and Rural Service Area of Palm Beach County. Petitioners allege that the Department's determination of in compliance is incorrect based upon a number of arguments. The Administrative Law Judge entered Findings, Conclusions, and an ultimate Recommendation rejecting these arguments.

RULINGS ON EXCEPTIONS

After entry of the Recommended Order, Petitioners City of West Palm Beach ("City"), Seminole Improvement District ("Seminole"), Callery-Judge Grove, LLP ("Callery"), Nathaniel Roberts ("Roberts"), Indian Trail Improvement District ("ITID"), and Village of Wellington ("Village") filed Exceptions to the Recommended Order.

Respondents Palm Beach County ("County") and the Department filed Responses to Petitioners' Exceptions.

ITID's Exception One

ITID's Exception One points out minor clerical or descriptive errors in the Preliminary Statement of the Recommended Order regarding the titles of three of ITID's witnesses. The corrections proposed by ITID are supported by the record and do not modify essential facts found by the ALJ.

Accordingly, Petitioner ITID's Exception One is GRANTED.

Petitioners City's, Seminole's, Callery's, Roberts', and Village's Exception One and ITID's Exception Two

Petitioners City's, Seminole's, Callery's, Roberts', and Village's Exception One and ITID's Exception Two argue that Finding of Fact 3 contains a conclusion of law and incorrectly construes the effect of the Plan Amendments on the County's ability to provide water and wastewater services in the Rural Service Area of the County. Not only is the finding correctly labeled as a finding of fact as it merely consolidates the testimony of the County's witnesses, it is supported by competent and substantial evidence in the record.

Accordingly, Petitioners City's, Seminole's, Callery's, Roberts' and Village's Exception One and ITID's Exception Two are DENIED.

Petitioners City's, Seminole's, Callery's, Roberts', and Village's Exception Three and ITID's Exception Five

Petitioners City's, Seminole's, Callery's, Roberts' and Village's Exception Three

and ITID's Exception Five argue that Finding of Fact 42 contains a conclusion of law. Additionally, they contend that the ALJ overstepped his authority in interpreting the Scripps Law (Chapter 2003-420, Law of Florida) or conversely that the ALJ's interpretation is incorrect. The interpretation of the Scripps Law's affect on the County, its Comprehensive Plan, and other provisions of Florida Law should be a conclusion of law rather than a finding of fact. However, the ALJ is not determining the constitutionality of Scripps Law, but rather is interpreting its plain language. The Petitioners have not provided an interpretation that is as or more reasonable than that of the ALJ.

Accordingly, Petitioner City's, Seminole's, Callery's, Roberts' and Village's Exception Three and ITID's Exception Five are GRANTED in that Finding of Fact 42 is a conclusion of law, but are DENIED in all other aspects.

Petitioners City's, Seminole's, Callery's, Roberts', and Village's Exceptions Four and Five and ITID's Exceptions Seven and Eight

Petitioners contend that Findings of Fact 46 and 47 contain conclusions of law and that the law regarding comprehensive plan amendments does not contemplate the existence of aspirational amendments. Conversely, the Petitioners contend that even if aspirational amendments are legally distinct from other types of comprehensive plan amendments, the Plan Amendments cannot be classified as aspirational, or similar to aspirational, due to the agreement between the County and Village of Royal Palm Beach that requires the County to immediately spend funds on water line expansion.

These findings do not contain legal conclusions as the ALJ summarized the testimony and evidence presented by the County and the Department regarding the data and analysis needed to support the Plan Amendments. Additionally, testimony elicited at the final hearing regarding the agreement between the County and Village of Royal Palm Beach shows that the agreement did not play a role in the adoption of the Plan Amendments, and was in fact adopted after the Plan Amendments. Therefore, the record contains competent and substantial evidence considered by the ALJ which the

Department cannot reweigh.

Accordingly, Petitioner City's, Seminole's, Callery's, Roberts' and Village's Exception Four and ITID's Exception Seven are DENIED.

Petitioners City's, Seminole's, Callery's, and Roberts' Exception Ten and Village's Exception Eight

Petitioners City's, Seminole's, Callery's, and Roberts' Exception Ten and Village's Exception Eight argue that Finding of Fact 52 contains conclusions of law that are erroneous. They argue that a comparative analysis is implicitly required by Section 163.3177(2), Florida Statutes, to show that the plan is "economically feasible." The ALJ's discussion of the statutory and rule requirements for data and analysis is a conclusion of law based on a plain reading of the applicable Florida law and rules. The Petitioners have failed to prove that their interpretation is as or more reasonable than that of the ALJ.

Accordingly, Petitioner City's, Seminole's, Callery's, and Roberts' Exception Ten and Village's Exception Eight are GRANTED in that Finding of Fact 52 is a conclusion of law, but are DENIED in all other aspects.

Petitioner ITID's Exception Eleven

Petitioner ITID's Exception Eleven argues that the ALJ's determination that "[i]t is at least fairly debatable that the Amendments are supported by relevant and adequate data and analysis" is a conclusion of law. The Department agrees.

Accordingly, Petitioner ITID's Exception Eleven is GRANTED.

Petitioners City's, Seminole's, Callery's, and Roberts' Exception Fourteen through Sixteen and ITID's Exception Fifteen, Sixteen, and Nineteen through Twenty-Two

These Exceptions allege that conclusions of law have been mislabeled as findings of fact, and that the ALJ has erred in his conclusions. The Department agrees that determinations of consistency are conclusions of law. However, the Petitioners have not provided any conclusions that are as or more reasonable than that of the ALJ.

Accordingly, Petitioners City's, Seminole's Callery's, and Roberts' Exceptions

Fourteen through Sixteen and ITID's Exceptions Fifteen through Sixteen and Nineteen through Twenty-Two are GRANTED in that portions of Finding of Facts 74, 76, 78, 83, 84, 85, and 86 are conclusions of law, but are DENIED in all other aspects.

Petitioners City's, Seminole's, Callery's, and Roberts' Exception Seventeen, ITID's Exception Twenty-Three, and Village's Exception Twelve

The Petitioners in City's, Seminole's, Callery's, and Roberts' Exception Seventeen, ITID's Exception Twenty-Three, and Village's Exception Twelve request the Department to overrule the ALJ's ultimate determination that the County's decision was fairly debatable. As the Department has not overruled any essential Findings of Fact or Conclusions of Law, the ALJ's determination must stand.

Accordingly, Petitioners in City's, Seminole's, Callery's, and Roberts' Exception Seventeen, ITID's Exception Twenty-Three, and Village's Exception Twelve are DENIED.

Remaining Exceptions

The remainder of the Petitioners' exceptions argue that the ALJ accepted the evidence of the Respondents over that offered by the Petitioners, that the ALJ accepted the evidence of the Respondents despite contradicting evidence or that the ALJ failed to make a finding of fact that the Petitioners believe was supported by the Petitioner's evidence. The Department cannot reweigh the evidence or make supplemental findings of fact. Prysi v. Dept. of Health, 823 So. 2d 823 (Fla. 1st DCA 2002); Lawnwood Med. Ctr. v. Agency for Health Care Admin., 678 So. 2d 421 (Fla. 1st DCA 1996). The ALJ's findings of fact are supported by competent, substantial evidence in the record.

Furthermore, these exceptions reiterate positions that were repeatedly asserted before the ALJ or are specifically addressed in the Recommended Order. Finally, these remaining exceptions fail to contain citations to the record or legal bases upon which the

exceptions should be granted. Therefore, these exceptions need not be addressed again in the agency's final order. Britt v. Depart. of Prof'l. Reg., 492 So. 2d 697 (Fla. 1st DCA 1986) disapproved on other grounds Dept. of Prof'l. Reg. v. Bernal, 531 So. 2d 967 (Fla. 1988); Section 120.57(1)(k), Florida Statutes.

Accordingly, Petitioners City's, Seminole's, Callery's, and Roberts' Exceptions Two, Six through Nine, and Eleven through Thirteen, Petitioner ITID's Exceptions Three, Four, Six, Nine, Ten, Twelve through Fourteen, Seventeen, and Eighteen, and Petitioner Village's Exceptions Two, Six, Seven, and Nine through Eleven are DENIED.

ORDER

Upon review and consideration of the entire record of the proceeding, including the Recommended Order, it is hereby ordered that:

1. Paragraph 8 of the Preliminary Statement on page 5 is modified to identify Myra Orlando as the President of the Board of Supervisors of the ITID, Penny A. Riccio as the Treasurer of the Board of Supervisors of the ITID, and Christopher Karch as a professional engineer and Vice President of the Board of Supervisors of ITID.

2. The findings of fact and conclusions of law in the Recommended Order are adopted, except as modified in this Final Order.

3. The Administrative Law Judge's recommendation is accepted; and

4. The comprehensive plan amendments adopted by Palm Beach County Ordinance No. 2004-026, are determined to be in compliance as defined in §163.3184(1)(b), Fla. Stat.

DONE AND ORDERED in Tallahassee, Florida.

THADDEUS L. COHEN

Thaddeus L. Cohen, AIA, Secretary
DEPARTMENT OF COMMUNITY AFFAIRS

NOTICE OF RIGHTS

ANY PARTY TO THIS FINAL ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW OF THE ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(b)(1)(C) AND 9.110.

TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(a). A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

YOU WAIVE YOUR RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH THE AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed with the undersigned Agency Clerk of the Department of Community Affairs, and that true and correct copies have been furnished to the persons listed below this 21st day of October, 2005.

for Paula Ford, Agency Clerk
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