

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THE DURHAM PARK NEIGHBORHOOD )  
ASSOCIATION, INC.; THE MIAMI )  
RIVER MARINE GROUP, INC.; and )  
HERBERT PAYNE; )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 06-1146GM  
 )  
CITY OF MIAMI, )  
 )  
Respondent, )  
 )  
and )  
 )  
BRISAS DEL RIO, LLC, )  
 )  
Intervenor. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the  
Division of Administrative Hearings by its assigned  
Administrative Law Judge, J. Lawrence Johnston, on June 28-29,  
2006, in Miami, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether the City of Miami's small scale development amendment adopted by Ordinance No. 12776 on March 2, 2006,<sup>1</sup> is in compliance, as defined by Section 163.3184(1)(b), Florida Statutes (2005).<sup>2</sup>

PRELIMINARY STATEMENT

On March 2, 2006, Respondent, City of Miami (City), adopted a small-scale plan amendment (Ordinance 12776), which changed the future land use designation on the City's Future Land Use Map (FLUM) on a parcel of property from Industrial and Medium Density Multifamily Residential to Commercial Restricted. The parcel is located on the Miami River at 1583 Northwest 24th Avenue, Miami, Florida. The amendment was adopted under the procedure described in Section 163.3187, Florida Statutes.

On April 3, 2006, Petitioners, The Durham Park Neighborhood Association, Inc. (DPNA), The Miami River Marine Group, Inc. (MRMG), and Herbert Payne (Payne) filed their Petition Challenging Compliance of a Small-Scale Comprehensive Plan Amendment with the Florida Growth Management Act (Petition). By Notice of Hearing dated April 13, 2006, a final hearing was scheduled for June 28-30, 2006, in Miami, Florida. On April 14,

2006, Intervenor, Brisas del Rio, LLC (Brisas), the owner of the parcel in question, filed its Petition to Intervene in support of the challenged amendment, which was granted.

On April 18, 2006, Petitioners filed a Motion for Leave to Amend Petition. On April 19, 2006, Petitioners filed a Motion to Consolidate Related Cases (this case and DOAH Case No. 06-0759GM). Intervenor filed responses opposing consolidation and indicating no objection to amendment of the Petition but reserving the right to move to dismiss or to strike portions of it. The City adopted Intervenor's Response on amendment of the Petition.

During a telephonic hearing held on April 27, 2006, the City and Intervenor were given until May 5, 2006, to file their motion to dismiss or to strike, and Petitioners were given until May 10, 2006, to file a response. On April 28, 2006, consolidation was denied. However, to the extent possible, the parties were required to attempt to coordinate discovery and other matters with the Intervenor in DOAH Case No. 06-0759GM to minimize duplication of evidence, time, and effort. On May 5, 2006, Intervenor and Respondent filed a Supplemental Response, which contained their motion to dismiss or to strike, and on May 11, 2006, Petitioners filed a Reply.

On May 16, 2006, Petitioners filed a Motion to Continue Final Hearing, which was opposed by the other parties.

Another telephonic hearing held on the pending motions on May 19, 2006. Based on the written and oral arguments, the motion to continue was denied, and an Order Granting Leave to Amend but Striking Portions of Amended Petition was entered on May 24, 2006, which struck the references to Rule Chapter 9J-11 in Amended Petition ¶¶ 1, 11, 34, and 80, and Amended Petition ¶¶ 60 f., g., p., q., r., and s., 62 c., e., f., and k., 67 a., and 69 c. and d. (referencing plan provisions having no conceivable bearing on the FLUM amendment at issue, including Policy LU-1.5.1; Policy LU-1.6.5; Policy PA-3.3.1; Goal CM-3; Objective CM-3.1; Policy CM-3.1.1; Objective LU-1.4; Goal HO-2; Objective HO-2.1; Policy TR-1.5.11; Policy NR-1.1.5; Policy-SS 1.3.3; and Policy-PW 1.1.1, respectively).

The request to strike allegations that the future land use map (FLUM) amendment at issue was not small-scale was denied because it did not eliminate all disputed issues of material fact on the issue. However, it was noted: "Elimination of all such disputed issues of material fact would, however, result if Petitioners become estopped from making these allegations by a final order adopting the Recommended Order in DOAH Case No. 04-2754GM [Payne, et al. v. City of Miami, et al., 2006 Fla. ENV LEXIS 136 (DOAH May 16, 2006), which upheld the City's "net lot area" method of calculating the size of a parcel subject to a FLUM amendment, among other things.]"

Requests to strike numerous references to plan provisions governing land development regulations (LDRs) and development orders (DOs) was denied because they could be relevant to Petitioners' allegation that the FLUM amendment is inconsistent with the City's comprehensive plan as a whole (although it was ruled as a matter of law that the FLUM amendment at issue would not be found to be "not in compliance" for being inconsistent with particular plan provisions governing LDRs and DOs.)

Requests to strike references to all plan provisions regarding the Port of Miami River were denied because the decision in Herbert Payne, et al. v. City of Miami et al., 927 So. 2d 904, 908 (Fla 3d DCA 2005)(holding that the Port of Miami River plan provisions are "intended to apply to the 'uses along the banks of the Miami River'" and not just to specific companies named in a footnote to one of the plan provisions explaining the unusual nature of the Port of Miami River).

Requests to strike allegations pertaining to LDRs, DOs, and zoning issues were denied "to the extent that they could be relevant to background and data and analysis."

A request for attorney's fees in the motion to dismiss or strike was denied.

As a result of these rulings, the only Comprehensive Plan goals, objectives and policies remaining for consideration were the following: Goal LU-1, subparts (1), (2), (3), and (5);

Policy LU-1.1.1; Policy LU-1.1.2; Policy LU-1.1.10; Policy LU-1.1.11; Objective LU-1.2; Objective LU-1.3; Policy LU-1.3.6; Objective LU-1.5; Objective LU-1.6; Policy LU-1.6.1; Policy LU-1.6.4; Goal PA-3; Objective PA-3.1; Policy PA-3.1.1; Policy PA-3.1.2; Policy PA-3.1.3; Objective PA-3.2; Policy PA-3.2.1; Objective PA-3.3; Policy HO-1.1.9; Policy HO-2.1.4; Goal TR-1; Policy TR-1.1.1; Policy TR-1.5.10; Objective NR-1.3; Objective NR-3.2; Policy NR-3.2.1; Policy NR-3.2.2; Policy NR-3.2.3; Goal CM-4; Objective CM-4.1; Policy CM-4.1.5; Objective PW-1.2; Policy PW-1.2.1; and Policy CI-1.2.3. In addition, the ruling noted: "Other allegations also may be estopped by [a final order adopting the Recommended Order in Payne, et al. v. City of Miami, et al., DOAH Case No. 04-2754GM, 2006 Fla. ENV LEXIS 136, supra.]"

On June 22, 2006, the parties filed a Pre-Hearing Stipulation.

On June 26, 2006, the City and Intervenor filed a Request for Administrative/Judicial Notice of: Monkus, et al. v. City of Miami, et al., Final Order Number DCA04-GM-197, DOAH Case No. 04-1080GM, 2004 Fla. ENV LEXIS 105, \*33-34 (DOAH Sept. 3, 2004; DCA Oct. 26, 2004); and Payne, et al. v. City of Miami, et al., DOAH Case No. 04-2754GM, 2006 Fla. ENV LEXIS 136 (DOAH May 16, 2006). On June 27, 2006, the City and Intervenor filed a Request for Administrative/Judicial Notice of the Final Order in

Payne, et al. v. City of Miami, et al., DOAH Case No. 04-2754GM, 2006 Fla. ENV LEXIS 75 (DCA June 21, 2006), which adopted the Recommended Order. The morning of the final hearing, they filed a Joint Motion for Collateral Estoppel based on that Final Order. Petitioners stipulated to official recognition, objected to collateral estoppel primarily on the ground that the Final Order was subject to appeal and their intention to file a written response, and requested that the proceedings in Payne, et al. v. City of Miami, et al., DOAH Case No. 06-0759GM, also should be officially recognized (which did not seem to have any bearing on the matter at hand). Over the objections, it was ruled that, either on the basis of collateral estoppel or stare decisis, the effect of the Final Order was as follows: the City's "net lot area" method of calculating the size of a parcel subject to a FLUM amendment was conclusively upheld; the numerous references in the Amended Petition to plan provisions governing LDRs and DOs were stricken as irrelevant; it was conclusively established that all portions of the Port of Miami River Sub-Element of the City's Comprehensive Plan were irrelevant except for Objective PA-3.3 (on coordination with other agencies); and it was conclusively established that the Miami River Master Plan (MRMP), not the Miami River Corridor Urban Infill Plan (UIP), defined the industrial Up River and transitional Mid River and established the City's policies with

respect to those areas. As a result, the issues for determination at the final hearing were further narrowed.

At the final hearing, Petitioners presented the testimony of Lourdes Slazyk, assistant director of the City Planning Department; Herbert Payne, a tugboat captain on the Miami River; Brett Bibeau, managing director of the Miami River Commission; Fran Bohnsack, executive director of the Miami River Marine Group, Inc.; and Horacio S. Aguirre, president of DPNA. Also, they offered Petitioners' Exhibits 1-4, 13-16, 18, 19, 21, 24, 24-I, 25, 28, 31, 32, 38(a.-c.), 40-42, 56, 61, 61 (a.-b.), 70, and 76. Objections to Petitioners' Exhibits 13-16, 18, 19, 31, 32, 38(a.-b.), 40, 56, and 76 were sustained. Ruling was reserved on objections to Petitioners' Exhibits 1, 25, 38(c.), and 70. It is now ruled that the objections are overruled, and the exhibits are admitted in evidence, along with the other exhibits admitted during the hearing.

The City and Intervenor called no additional witnesses but had City Exhibit 1 and Intervenor's Exhibits 17 and 18 admitted in evidence.

A Transcript of the hearing (three volumes) was filed on August 7, 2006. Proposed recommended orders (PROs) were due no later than August 17, 2006. Respondent and Intervenor timely-filed a Joint PRO, and Petitioners timely filed a PRO.



On August 16, 2006, Petitioners filed a Request for Official Recognition of DOAH Case No. 06-0759GM and Supplemental Response to Intervenor's Notice of Filing [the Final Order in DOAH Case] 04-2754GM (pointing out that Petitioners appealed and again contesting its preclusive effect against Petitioners on the issues decided in the Final Order.) On August 17, 2006, the City and Intervenor filed a Joint Objection in Opposition to Petitioners' Request for Recognition, etc., as well as a Joint Objection to Petitioners' PRO. All the post-hearing submissions have been considered in the preparation of this Recommended Order, which declines to recede from collateral estoppel and stare decisis rulings, denies the request for official recognition of the evidence introduced in DOAH Case No. 06-0759GM (while otherwise granting official recognition of the case file and orders entered in it, to the extent relevant, including DCA's Final Order entered on August 31, 2006, which essentially adopted the Recommended Order, Payne, et al. v. City of Miami, et al., DOAH Case No. 06-0759GM, 2006 Fla. Div. Adm. Hear. LEXIS 378 (DOAH Aug. 2, 2006), and ruled against the Petitioners in that case), and adequately treats the Joint Objection to Petitioners' PRO.

#### FINDINGS OF FACT

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

a. Background

1. Intervenor submitted an application to the City for an amendment to the FLUM which would change the land use designation from Industrial and Medium Density Multifamily Residential to Restricted Commercial on a parcel of property less than ten acres in size, determined by use of the City's "net lot area" calculation method. The application was submitted concurrently with applications for a zoning change and for a major use special permit (MUSP).

2. Intervenor's property is located at 1583 Northwest 24th Avenue, Miami, and on the south side of the Miami River, which is its border to the north. To the immediate east of the parcel is Industrial property, but to the immediate west is Medium Density Multi-Family Residential, and to the immediate south and west is Duplex Residential.

3. The Industrial use to the immediate east is known as Florida Detroit Diesel-Allison, an engine repair facility that services boats as well as buses. River Run, a multi-family residential development, is to the immediate west; and there are low density residential uses to the south, southwest, and west. A major park is to the north, across the river from Intervenor's property. The primary land use around Intervenor's property is residential.

4. The applications were reviewed by the City's Planning and Zoning Department (Planning Department) and its Planning Advisory Board. Both recommended that the applications be approved. In doing so, they determined that the land use change furthers the objectives of the Plan, and that the land use pattern in the neighborhood should be changed.

5. On February 23, 2006, the City Commission (Commission) voted to approve the FLUM, zoning, and MUSP applications. The FLUM change was adopted by Ordinance 12776, which was signed by the Mayor on March 2, 2006.

6. Because the amendment is a small scale development amendment under Section 163.3187(1)(c), Florida Statutes, it was not reviewed by the Department. See § 163.3187(3)(a), Fla. Stat.

7. On April 3, 2006, Petitioners filed their Petition challenging the FLUM amendment. The Petition generally alleged that the amendment was internally inconsistent with other provisions in the City's Plan, that the amendment was not supported by adequate data and analysis, and that the FLUM amendment was not "in compliance" for a variety of other reasons.

b. The Parties

8. DPNA is a non-profit corporation comprised of homeowners, residents, and businesses in the Durham Park

neighborhood, which lies on the south side of the Miami River well to the east of the Intervenor's property, east of four-lane Northwest 22nd Avenue, and consists primarily of single-family residential uses. It is a voluntary organization with membership open to all residents of Durham Park, whether they own or rent. DPNA holds meetings at neighborhood homes or in local restaurants, occasionally disseminates fliers, holds an annual meeting, and files the annual report required by law. Its president, Stuart Aquirre, appeared before the City Commission at the adoption hearing on behalf of DPNA and offered comments in opposition to the FLUM Amendment. However, DPNA does not own property or own or operate a business in the City. See Final Order entered August 31, 2006, in Payne, et al. v. City of Miami, et al., DOAH Case No. 06-0759GM, adopting the Recommended Order, 2006 Fla. Div. Adm. Hear. LEXIS 378 (DOAH Aug. 2, 2006).

9. Mr. Payne owns and operates a tug boat company named P & L Towing and Transportation, which is located in the Lower River portion of the Miami River in the City and operates along the Miami River in the City (and the County). Mr. Payne commented in opposition to the plan amendment at the adoption hearing on the FLUM amendment.

10. In the past, Mr. Payne's company has delivered vessels to the property now owned by Intervenor. He has not used the

property for any business since 2002, except once or twice during the last four-to-five years to tow some boats there for safe harbor during a hurricane. After suffering a downturn after the terrorist attack on September 11, 2001, Mr. Payne's business has grown in recent years, due in part to new business in the Gulf of Mexico, and has acquired another boat and additional crew.

11. MRMG is a private, non-profit trade association. Most of its members own and operate businesses on the Miami River, both in the City and in the County. MRMG's purpose is to preserve the working river. Its executive director, Fran Bohnsack, appeared before the City Commission on behalf of her association and offered comments in opposition to the proposed amendment.

12. The City is a political subdivision of the State of Florida. It initially adopted the Plan in 1989. The Plan has been amended from time to time.

13. As indicated, Intervenor is the owner of the subject property. Intervenor submitted comments in support of the FLUM amendment for consideration at the adoption hearing.

c. FLUM Amendment

14. The FLUM Amendment changes the land use designation applicable to Intervenor's property from "Industrial" and "Medium Density Residential" to "Restricted Commercial."

15. The section of the Plan entitled "Interpretation of the Future Land Use Plan Map," at pages 13-16, describes the various land use categories in the Plan. It describes the Industrial land use category as follows:

Industrial: The areas designated as "Industrial" allow manufacturing, assembly and storage activities. The "Industrial" designation generally includes activities that would otherwise generate excessive amounts of noise, smoke, fumes, illumination, traffic, hazardous wastes, or negative visual impact unless properly controlled. Stockyards, rendering works, smelting and refining plants and similar activities are excluded. Residential uses are not permitted in the "Industrial" designation, except for rescue missions, and live-aboards in commercial marinas.

16. The section also describes the "Medium Density Multifamily Residential" land use classification as follows:

Medium Density Multifamily Residential: Areas designated as "Medium Density Multifamily Residential" allow residential structures to a maximum density of 65 dwelling units per acre, subject to the detailed provisions of the applicable land development regulations and the maintenance of required levels of service for facilities and services included in the City's adopted concurrency management requirements.

Supporting services such as community-based residential facilities (14 clients or less, not including drug, alcohol or correctional rehabilitation facilities) will be allowed pursuant to applicable state law, community-based residential facilities (15-50 clients) and day care centers for children and adults may be permissible in suitable locations.

Permissible uses within medium density multifamily areas also include commercial activities that are intended to serve the retailing and personal services needs of the building or building complex, small scale limited commercial uses as accessory uses, subject to the detailed provisions and applicable land development regulations and the maintenance of required levels of service for such uses, places of worship, primary and secondary schools, and accessory post-secondary educational facilities.

Professional offices, tourist and guest homes, museums, and private clubs or lodges are allowed only in contributing structures within historic sites or historic districts that have been designed by the Historical and Environmental Preservation Board and are suitable locations within medium density multifamily residential areas, pursuant to applicable land development regulations and the maintenance of required levels of service for such uses. Density and intensity limitations for said uses shall be restricted to those of the contributing structure(s).

17. Finally, the section describes the "Restricted Commercial" land use category as follows:

Restricted Commercial: Areas designated as "Restricted Commercial" allow residential uses (except rescue missions) to a maximum density equivalent to "High Density Multifamily Residential" subject to the same limiting conditions; any activity included in the "Office" designation as well as commercial activities that generally serve the daily retailing and service needs of the public, typically requiring easy access by personal auto, and often located along arterial or collector roadways, which include: general retailing, personal and professional services, real estate, banking and other financial services, restaurants,

saloons and cafes, general entertainment facilities, private clubs and recreation facilities, major sports and exhibition or entertainment facilities and other commercial activities whose scale and land use impacts are similar in nature to those uses described above, places of worship, primary and secondary schools. This category also includes commercial marinas and living quarters on vessels as permissible.

18. According to the Interpretation of the Future Land Use Plan Map, page 13, paragraph 4, the Plan is based on a pyramid structure. That is, each land use classification permits all land uses within previously listed categories, except as otherwise specifically provided in the Plan. Therefore, with the exception of residential uses, all uses permitted under the Restricted Commercial designation are permitted under the Industrial classification.

19. The Restricted Commercial category is a logical designation for the property because of its proximity to residential neighborhoods. Those residential properties would clearly be more detrimentally affected by industrial activities that may generate excessive amounts of noise, smoke, fumes, illumination, traffic, hazardous wastes, or negative visual impact, which are now authorized under the Industrial designation.



d. The Miami River

20. The Miami River runs northwest to southeast for more than five miles from the Miami International Airport to Biscayne Bay (the mouth of the River). For planning purposes, it includes three sections: the Upper River, the Middle River, and the Lower River. Although the demarcations of those sections have been in dispute, the best evidence of the appropriate demarcations of the three sections is found in the Miami River Master Plan (MRMP), which was adopted by the City in 1992. This was the finding and conclusion in both DOAH Case No. 04-2754GM and DOAH Case No. 06-759GM.

21. The MRMP clearly depicts the geographic scope of the Mid-River (or Middle River) as extending west to Northwest 27th Avenue and the Up River (or Upper River) as being that portion of the Miami River lying west of Northwest 27th Avenue. Based on these demarcations, the Lower River would run from the mouth of the Miami River to the 5th Street Bridge, the Middle River from the 5th Street Bridge to Northwest 27th Avenue, and the Upper River from Northwest 27th Avenue westward. Using these demarcations, Intervenor's property is located in the Middle River.

22. In its discussion of the Middle River, the MRMP provides:

The Mid-River area contains most of the existing housing located along the Miami River. The wide variety of dwelling types, ranging from single family homes to high-rise apartment/condominium buildings, are mostly occupied by middle-income households. This is an important segment of the population for the City to retain in order to support the local economy and tax base.

A number of opportunities remain for development of new housing by building on vacant lots or by increasing the density of existing developed lots. New housing construction should be encouraged, except on lands reserved for water dependent uses. In the proposed SD-4.1 waterfront commercial zoning district (See page 1.14) residential development could be permitted as an accessory use to a marina.

The property is located within the referenced proposed SD-4.1 waterfront commercial zoning district.

23. According to the MRMP, the strategy for the Middle River is to "[b]ring the neighborhoods back to the river." The MRMP further provides that "[d]iverse residential neighborhoods interspersed with commercial districts make the Mid-River unusual. The strategy is to develop centers of activities at strategic locations that will become gateways to the river and give identity to the neighborhoods."

24. In contrast, the MRMP describes the Up-River as "a working river." It also notes that "[m]arine industries in the Up-River area create a busy, economically vital district that is important to preserve. The challenge is to protect these

industries from displacement by non-water-dependent uses and to nurture growth in marine industries without negatively impacting nearby residential neighborhoods."

25. In describing the Upper River, the MRMP provides:

The character of the river changes dramatically west of NW 27th Avenue bridge. In fact, it is not really the river there; it is the man-made Miami Canal (and the Tamiami Canal branching off to the west). In contrast to the gently curving paths and irregular edges of the natural river, the canal banks are rigidly straight and significantly closer together at 90 feet.

The most striking difference in the up-river area is the change in land use. The Miami Canal is almost entirely industrial in character, with commercial shipping being the predominant use. Most of the larger cargo vessels on the Miami River are loaded and unloaded in this area, resulting in an incredibly busy, narrow river channel.

Due to the industrial nature of the up-river corridor, many of the urban design recommendations made for the mid-river and downtown areas are not applicable. The emphasis in this area should be to promote growth in shipping and related industries and to provide adequate roadways for the vehicles and trucks associated with these businesses.

Unlike the character of the Upper River, the portion of the River between Northwest 27th Avenue and Northwest 22nd Avenue is less than half industrial and exhibits the typical characteristics of the Middle River as a "transitional district" between the Upper River and the Lower River.

26. Intervenor's Property is situated on the Miami River at Northwest 24th Avenue. Land uses surrounding the Subject Property include: industrial; duplex residential; and medium-density multi-family residential. There is a park across the river, and low density residential to the south, southwest, and west. River Run, a multi-family residential development is to the west. Industrial use is to the east, but to the east of that is the Riverside property, which is now Restricted Commercial as a result of the Final Order in Payne, et al. v. City of Miami, et al., DOAH Case No. 06-0759GM.

27. Because the Middle River is "a mixed use transitional section of the river," mixed-use development is intended to be used as a mechanism to revitalize and stabilize the Middle River and at the same time allow more people access to the river. It is also intended as a way to combat the crime that has existed in the Middle River for many years.

28. Petitioners did not dispute that Restricted Commercial generally is a reasonable land use designation for the Middle River and offered no expert testimony to the contrary. Rather, their dispute is with the proper boundaries of the Middle River and the propriety of Restricted Commercial in the specific location of Intervenor's property.

29. Petitioners contend that the more recent UIP, which places the boundary between the Upper River and the Middle River

farther east at Northwest 22nd Avenue, should control. In addition to the other uses in this transitional area, until recently the UIP's boundary would have incorporated as part of the Middle River five contiguous industrial land uses fronting on the south side of River from approximately Northwest 21st Avenue to Northwest 24th Avenue (the River Marine property to the east of the 22nd Avenue bridge, the Riverside property to the west of the 22nd Avenue bridge, the Florida Detroit Diesel-Allison property, Intervenor's property that is the subject of this case, and the River Run South property to the west of Intervenor's property, from east to west). Collectively these properties were the single greatest concentration of Industrial land along the River in the City. The River Marine property is a shipping operation. The Detroit Diesel property remains in use as a repair facility for both private and commercial vessels, as well as buses and trucks. Neither the Riverside property nor Intervenor's property was in actual industrial use at the time of the applications to change their FLUM designations from Industrial, although both have operated as a location for repair and storage of large private and commercial vessels in the past. However, the Riverside property was changed from Industrial to Restricted Commercial as a result of the Final Order entered in Case No. 06-0759GM. The challenged FLUM amendments affecting Intervenor's property are not yet in

effect. See § 163.3189(2)(a), Fla. Stat. The River Run South property to the west of Intervenor's property was changed from Industrial to Medium Density Multi-Family.

30. Notwithstanding Petitioner's arguments, the fact remains that the City decided not to adopt the UIP's boundary between the Upper River and Middle River. While the City has adopted three other parts of the UIP, which are not pertinent to this proceeding, the City has declined to adopt the UIP's demarcation of the Upper River and the Middle River.

31. Petitioners also argue in their PRO that the City and Intervenor overlook parts of the MRMP that would suggest that Restricted Commercial is inappropriate in the specific location of Intervenor's property. But they presented no expert land use testimony to support their arguments, and they failed to prove that the parts of the MRMP cited in their PRO outweigh the parts of the MRMP that would support the FLUM Amendment at issue.

f. Urban Infill Area

32. The City is designated as an urban infill area which assists the City in urban infill concepts of efficient use of utilities, infrastructure, and transportation systems.

33. The City's designation as an urban infill area was made after adoption of the Comprehensive Plan and the MRMP and it adds importance to the MRMP's concept of the Middle River as a transition area having mixed-use development.

34. The FLUM Amendment's Restricted Commercial land use classification is consistent with the City's urban infill designation and the Comprehensive Plan because it permits mixed-use development and increases the flexibility of Intervenor's property to be developed in a manner that is consistent with the City's urban infill designation.

g. Consistency with City's Comprehensive Plan

35. Petitioners failed to prove the alleged inconsistency of the FLUM Amendment with any of the following Comprehensive Plan objectives and policies, which are discussed in more detail below: Goal LU-1(1),(3), (4), and (5); Policy LU-1.1.2; Objective LU-1.2; Objective LU-1.3; Policy LU-1.3.6; Policy LU-1.6.4; Goal CM-4; Objective CM-4.1; Policy CM-4.1.5; Objective NR-1.3; Objective NR-3.2; Policy NR-3.2.1; Policy NR-3.2.2; Policy NR-3.2.3; Objective PW-1.2; Policy PW-1.2.1; Policy CI-1.2.3, Objective PA-3.2; Policy PA-3.2.1; Objective 3.3; Goal TR-1; and Policy TR-1.1.1. (Allegations of inconsistency with other plan provisions have been stricken.)

36. Future Land Use Element Goal LU-1 is to:

Maintain a land use pattern that (1) protects and enhances the quality of life in the city's residential neighborhoods; (2) fosters redevelopment and revitalization of blighted or declining areas; (3) promotes and facilitates economic development and the growth of job opportunities in the city; (4) fosters the growth and development of downtown as a regional center of domestic

and international commerce, culture and entertainment; (5) promotes the efficient use of land and minimizes land use conflicts; and (6) protects and conserves the city's significant natural and coastal resources.

37. Petitioners' contention that the FLUM Amendment is inconsistent with Goal LU-1(1) is without merit. Intervenor's property is adjacent to low-density residential uses. The FLUM Amendment will eliminate the potential for development of industrial uses that may generate "excessive amounts of noise, smoke, fumes, illumination, traffic, hazardous wastes, or negative visual impact." Ironically, and illogically, Petitioners contend that Industrial is better than Restricted Commercial for the quality of life of surrounding residential neighborhoods, while at the same time contending that Industrial use is incompatible with residential uses. Petitioners failed to prove that the FLUM Amendment is inconsistent with Goal LU-1(1). To the contrary, it is consistent with that goal.

38. With respect to Goal LU-1(3) concerning the promotion and facilitation of economic development and the growth of job opportunities in the City, Petitioners contended that the FLUM Amendment will negatively impact marine industrial uses along the river. To the contrary, Payne, who owns a marine-related business, testified that he has not used the Riverside property for any business purpose since 2002, except once or twice during



the last four to five years for safe harbor during a hurricane. The FLUM Amendment is therefore not inconsistent with Goal LU-1(3).

39. Subpart (4) of Goal LU-1 is not relevant in this case because it pertains to the downtown area, and Intervenor's property is not located in the downtown area. Consequently, the FLUM Amendment cannot be inconsistent with Goal LU-1(4).

40. The FLUM Amendment is consistent with Goal LU-1(5) by minimizing land use conflicts. The FLUM Amendment allows mixed uses that will create a transition zone between the more intensive industrial use and the less intensive residential use.

41. The FLUM Amendment is also consistent with subpart (2) of Goal LU-1, which is concerned with the redevelopment and revitalization of declining areas. The neighborhood of Intervenor's property includes an area in decline, and mixed-use projects that include work force and affordable housing will help to stabilize the area by providing housing opportunities for employees at the Civic Center and in downtown who want to live nearer to where they work.

42. Policy LU-1.1.1 provides:

Development orders authorizing new development or redevelopment that results in an increase in the density or intensity of land use shall be contingent upon the availability of public facilities and services that meet or exceed the minimum LOS standards adopted in the CIE.

43. Policy LU-1.1.2 provides:

The City's Planning Department, with the assistance of various City departments and agencies, shall be responsible for monitoring the current and projected LOS provided by public facilities. The Planning Department shall perform the required concurrency review of proposed development for submittal to the State Department of Community Affairs (DCA), as required by Florida statutes and administrative rules.

The City did a concurrency analysis of the FLUM Amendment.

Petitioners presented no evidence to show that the concurrency analysis was defective in any way. The FLUM Amendment is therefore consistent with Policy LU-1.1.2.

44. Objective LU-1.2 is to:

Promote the redevelopment and revitalization of blighted, declining or threatened residential, commercial and industrial areas.

Petitioners' introduced no evidence of inconsistency with this policy. To the contrary, there was evidence mixed-use projects allowed in Restricted Commercial could help reverse decline in the area.

45. Objective LU-1.3 provides:

The City will continue to encourage commercial, office and industrial development within existing commercial, office and industrial areas; increase the utilization and enhance the physical character and appearance of existing buildings; and concentrate new commercial and industrial activity in areas where the capacity of existing public facilities can

meet or exceed the minimum standards for Level of Service (LOS) adopted in the Capital Improvement Element (CIE).

The Restricted Commercial land use designation permits the types of land uses that Objective LU-1.3 seeks to encourage-- commercial and office uses. Moreover, the concurrency analysis performed by the City revealed that approval of the FLUM Amendment would not result in a failure of existing public facilities to meet or exceed applicable Level of Service minimum standards. Therefore, the FLUM Amendment is not inconsistent with Objective LU-1.3.

46. Policy LU-1.3.6 provides:

The City will continue to encourage a diversification in the mix of industrial and commercial activities and tenants through comprehensive marketing and promotion efforts so that the local economy is buffered from national and international cycles. Particular emphasis is on, but not limited to, Southeast Overtown/Park West, Latin quarter, Little Haiti, Little River Industrial District, River Corridor, the Garment District and the Omni area.

The Restricted Commercial designation allows greater flexibility in the development of the Subject Property. Such greater flexibility is not inconsistent with encouraging a diversification in the mix of industrial and commercial activities. The mix of uses permitted under the Restricted Commercial land use classification will promote urban infill and

serve to prevent urban sprawl. The FLUM Amendment is, therefore, not inconsistent with Policy LU-1.3.6.

47. Policy LU-1.6.4 provides:

Any proposal to amend the City's zoning ordinance that has been deemed to require an amendment to the Future Land Use Plan Map by the Planning Department, shall require a concurrency review and a finding from the Planning Department that the proposed amendment will not result in a LOS that falls below the adopted minimum standards, and will not be in conflict with any element of the Miami Comprehensive Neighborhood Plan. Based on its evaluation, and on other relevant planning considerations, the Planning Department will forward a recommended action on said amendment to the Planning Advisory Board, which will then forward its recommendation to the City Commission.

The City's concurrency analysis demonstrated that approval of the FLUM Amendment would not result in a failure of existing public facilities to meet or exceed applicable Level of Service minimum standards. Petitioners presented no evidence to refute that analysis. The FLUM Amendment was properly noticed for a public hearing before the City's Planning Advisory Board. In accordance with City policy, the Planning Advisory Board held a public hearing on the FLUM Amendment and provided the Commission with its recommendation (of approval). The FLUM Amendment is therefore not inconsistent with Policy LU-1.6.4.

48. Transportation Element Goal TR-1 is to:

Maintain an effective and cost efficient traffic circulation network within the City of Miami that provides transportation for all persons and facilitates commercial activity, and which is consistent with, and furthers, neighborhood plans, supports economic development, conserves energy, and protects and enhances the natural environment.

Petitioners failed to prove that the FLUM Amendment is inconsistent with this goal. The City's concurrency analysis determined that the FLUM Amendment would not result in unacceptable level of service with respect to traffic circulation. Petitioners presented no evidence to refute this analysis.

49. Policy TR-1.1.1 provides:

The City hereby adopts designation of the City, excluding Virginia Key, Watson Island and the uninhabited islands of Biscayne Bay that have a land use and zoning classification of Conservation, as an Urban Infill Area pursuant to Miami-Dade County's designation of an Urban Infill Area lying generally east of the Palmetto Expressway and including all of the City of Miami. Within this area, the concentration and intensification of development around centers of activity shall be emphasized with the goals of enhancing the livability of residential neighborhoods and the viability of commercial areas. Priority will be given to infill development on vacant parcels, adaptive reuse of underutilized land and structures, and the redevelopment of substandard sites. Maintenance of transportation levels of service within this designated Urban Infill Transportation

Concurrency Exception Area shall be in accordance with the adopted Transportation Corridors level of service standards set forth in Policies TR-1.1.2 and TR-1.1.3 of the Transportation Element of the MCNP. (See Land Use Policy LU-1.1.11.)

50. The fact that Intervenor's Property is within an urban infill area was a consideration of the City when adopting the FLUM Amendment. The FLUM Amendment--reclassifying land in the urban infill area from Industrial and Medium-Density Multifamily Residential to Restricted Commercial--is in no way inconsistent with this policy.

51. Coastal Management Element Goal CM-4 is to:

Ensure public safety and the protection of property within the coastal zone from the threat of hurricanes.

Objective CM-4.1 is to:

Minimize the potential for loss of human life and the destruction of property from hurricanes.

Policy CM-4.1.5 provides:

Each proposed land use and land development regulation change within the Coastal High Hazard area of the city will require an analysis of its potential impact on evacuation times and shelter needs in the event of a hurricane.

Petitioners presented no evidence addressing this goal, objective, and policy and failed to prove that the FLUM Amendment is inconsistent with them.

52. Natural Resources Element Objective NR-1.3 is to:

Maintain and enhance the status of native species of fauna and flora.

Petitioners failed to present any evidence showing that the FLUM Amendment is inconsistent with this objective.

53. Objective NR-3.2 is to:

Prevent the degradation of ambient air quality within the city.

Policy NR-3.2.1 states:

Establish vehicular transportation patterns that reduce the concentration of pollutants in areas known to have ambient air quality problems.

Policy NR-3.2.2 provides:

Support those elements of the Miami-Dade County Comprehensive Development Master Plan that encourage the use of Metrorail and Metromover by directing high density new development or redevelopment first to areas nearest Metrorail and Metromover stations, and those land use policies that do not foster the proliferation of employment centers in the suburban areas of the county. (See Transportation Objective TR-1.5 and associated policies.)

Policy NR-3.2.3 provides:

Work with the County transportation planning agencies to continue to increase the quality of mass transit services within the city.

54. Petitioners failed to provide any evidence showing that the FLUM Amendment will have negative impact on the City's air quality. To the contrary, the FLUM Amendment changes the

land use classification from one that may involve "excessive amounts of noise, smoke, fumes, . . . , [and] hazardous wastes . . . ." It was not proven that the FLUM Amendment is inconsistent with Objective NR-3.2 or Policies NR-3.2.1, NR-3.2.2, and NR-3.2.3 (which is irrelevant) and has no bearing on the City's adoption of the FLUM Amendment.

55. Potable Water Element Objective PW-1.2 and Policy PW-1.2.1 both address availability of potable water. Objective PW-1.2 is to:

Ensure adequate levels of safe potable water are available to meet the needs of the City.

Policy PW-1.2.1 is to:

Ensure potable water supplies meet the established level of service standards for transmission capacity of 200 gallons per capita per day (GPCD). (See Natural Resource Conservation Policy NR-2.1.5 and Capital Improvements Policy CI-1.2.3.)

56. The City's concurrency analysis revealed that potable water supplies will be available to the City after the FLUM Amendment. Petitioners presented no evidence to the contrary, and therefore did not prove that the FLUM Amendment is inconsistent with Objective PW-1.2 and Policy PW-1.2.1.

57. Capital Improvements Element Policy CI-1.2.3 provides:

Acceptable Level of Service Standards for public facilities in the City of Miami are:

a) Recreation and Open Space -- 1.3 acres of public park space per 1000 residents.



- b) Potable Water Transmission Capacity -- 200 gallons/resident/day. (See Potable Water Policy PW-1.2.1 and Natural Resource Conservation Policy NR-2.1.5.)
- c) Sanitary Sewer Transmission Capacity -- 100 gallons/resident/day.
- d) Storm Sewer Capacity -- Issuance of any development permit shall require compliance with a drainage level of service standard of a one-in-five-year storm event. For the storm drainage system as a whole, 20 percent of the existing system will be brought to a standard of a one-in-five-year storm event by the year 2000.
- e) Solid Waste Collection Capacity -- 1.28 tons/resident/year.
- f) Traffic Circulation -- The minimum level of service standard on limited access, arterial, and collector roadways that are not within designated Transportation Corridors is LOS E, with allowable exceptions and justifications therefore, with LOS measured by conventional V/C methodology. Within designated Transportation Corridors, which include approximately 95% of the roadway mileage within the City of Miami, a minimum LOS E is also maintained, but the measurement methodology is based on peak-hour person-trips wherein the capacities of all modes, including mass transit, are used in calculating the LOS. Specific levels of service by location and mode are set out in Policies 1.1.2 and 1.1.3 of the Transportation Policies in the Miami Comprehensive Neighborhood Plan 1989-2000.

Petitioners presented no evidence with respect to this policy and did not prove that the FLUM Amendment is consistent with Policy CI-1.2.3.

58. In sum, Petitioners failed to prove that the FLUM Amendment is inconsistent with any of the goals, objectives, or policies in the Comprehensive Plan.

i. The Port of Miami River

59. Petitioners also argue that the Port of Miami River Sub-Element must be considered in determining whether the amendment is in compliance. This Sub-Element is found in the Plan's Ports, Aviation and Related Facilities Element. It is an optional element not required under Chapter 163, Florida Statutes. Goal PA-3 of the Port of Miami River Sub-Element of the Plan refers to the Port as "a group of privately owned and operated commercial shipping companies located at specific sties along the Miami River." A footnote to the title of the Sub-Element defines the Port of Miami River as:

Simply a legal name used to identify some 14 independent, privately-owned small shipping companies located along the Miami River, and is not a "port facility" within the usual meaning of the term. The identification of the shipping concerns as the "Port of Miami River" was made in 1986 for the sole purpose of satisfying a U.S. Coast Guard regulation governing bilge pump outs.

60. The private shipping companies identified as comprising the Port of Miami River are listed in Volume II of the Plan. The location of each of those companies is also shown. See Petitioners' Exhibit 4, Section VIII, page 35. This information came from Miami-Dade County, where most of the

shipping companies were located. Ten of the 14 were west of Northwest 27th Avenue. Four were east of the 5th Street Bridge. None were between Northwest 27th Avenue and 5th Street Bridge.

61. Over the years, the City has consistently interpreted this Sub-Element as applying only to properties that are listed in Volume II of the Plan. Because Intervenor's property is not included within the City's definition of the Port of Miami River, in reviewing the application, the City adhered to its long-standing interpretation that the Sub-Element was not applicable or relevant to the analysis of the amendment's consistency with the Plan. See Payne, et al. v. City of Miami, et al., Final Order Number DCA06-GM-214, DOAH Case No. 06-0759GM, (DOAH Aug. 2, 2006; DCA August 31, 2006); Payne, et al. v. City of Miami, et al., Final Order Number DCA06-GM-132, DOAH Case No. 04-2754GM, 2006 Fla. ENV LEXIS 75 (DOAH May 16, 2006; DCA June 21, 2006); Monkus et al. v. City of Miami et al., Final Order Number DCA04-GM-197, DOAH Case No. 04-1080GM, 2004 Fla. ENV LEXIS 105, \*33-34 (DOAH Sept. 3, 2004; DCA Oct. 26, 2004).

62. Petitioners contend that the Port of Miami River is more than just the 14 companies listed in the footnote to the Sub-Element. They point out that the footnote refers to "some 14," suggesting that, while referring to specific locations, there could have been more than 14, and presumably a change of ownership or name of a company would not "shrink" the Port.

Similarly, they contend, the Port subject to the Sub-Element should grow in size as new shipping businesses opened at other locations on the river.

63. In support of their argument, Petitioners point out that Objective PA-3.1 and Policy PA-3.1.2 of the Sub-Element contemplated the expansion and redevelopment of the Port over time. They also cite to Payne, et al. v. City of Miami, et al., 927 So. 2d 904 (Fla. 3d DCA 2005), which was an appeal from a circuit court order dismissing a complaint filed by Payne and MRMG under Section 163.3215, Florida Statutes, for lack of standing because they were not "substantially affected persons," and not in a proceeding under Section 163.3187, Florida Statutes, to determine whether an amendment was in compliance. Since the circuit court had granted a motion to dismiss, there was no evidentiary hearing, and no evidence was presented to either court regarding the Port of Miami River. In that context, the Payne court, in a majority opinion, considered the Sub-Element to be relevant and "intended to apply to the 'uses along the banks of the Miami River," and not just to specific companies named in the definition. The circuit court order was reversed, and the case was remanded for further proceedings. DCA's Final Order entered in DOAH Case No. 04-2754GM held that Payne was "based on a standing issue, with the discussion of the interpretation of the Port of Miami River Element and its

related policies occurring as dicta." Payne, et al. v. City of Miami, et al., Final Order Number DCA06-GM-132, DOAH Case No. 04-2754GM, 2006 Fla. ENV LEXIS 75, at \*9 (DOAH May 16, 2006; DCA June 21, 2006).

64. In this case (unlike in DOAH Case No. 06-0759GM), the only evidence of an updated list of shipping companies on the Miami River was the UIP, which indicated that, as of 2002, there were 25 private shipping companies operating on the Miami River. No map accompanies the UIP's list. From the evidence, which was not clear, it appears that one shipping company still was operating just east of Northwest 27th Avenue and that two shipping companies still were operating just east of Northwest 22nd Avenue. The latter two appear to have been operating on the north side of the river.

65. Even if the Port of Miami River is not limited to the 14 shipping companies or locations named in the Plan, it is clear from the evidence that Intervenor's property never functioned as a private shipping terminal, and neither did any of the other Industrial property on the south side of the river in the immediate vicinity of Intervenor's property. For that reason, the Port of Miami River Sub-Element does not apply to the FLUM amendment in this case.

66. Petitioners also contend that all marine industrial uses on the river are part of the Port of Miami River, whether

or not they would constitute shipping companies or businesses. Contrary to Petitioners' arguments, it is clear that the Port of Miami River Sub-Element does not apply to those other uses.

67. Assuming that the Port of Miami River Sub-Element applied to this FLUM amendment, not all of it would apply. Objective PA-3.1, and underlying Policies PA-3.1.1, 3.1.2, and 3.1.3, all relate to the purpose and scope of land development regulations for the Port of Miami River and are therefore not relevant. See Payne, et al. v. City of Miami, et al., Final Order Number DCA06-GM-214, DOAH Case No. 06-0759GM, (DOAH Aug. 2, 2006; DCA August 31, 2006); Payne, et al. v. City of Miami, et al., Final Order Number DCA06-GM-132, DOAH Case No. 04-2754GM, 2006 Fla. ENV LEXIS 75 (DOAH May 16, 2006; DCA June 21, 2006). Objective PA-3.2 and underlying Policy PA-3.2.1 pertain to the coordination of surface transportation access to the Miami River with the traffic and mass transit system shown on the traffic circulation map series and are not germane to this amendment. That leaves Goal PA-3 and Objective PA-3.3.

68. It was found and concluded in the DCA's Final Order in DOAH Case No. 06-0759GM and in DOAH Case No. 04-2754GM, which constitute stare decisis and collateral estoppel as to these Petitioners, that only Objective PA-3.3 would require consideration.

69. Objective PA-3.3 reads as follows:

The City of Miami shall coordinate its Port of Miami River planning activities with those of ports facilities and regulators including the U.S. Corps of Engineers, U.S. Coast Guard, and Miami-Dade County's Port of Miami.

70. Petitioners failed to present any evidence concerning a lack of coordination activities relative to the FLUM amendment. Coordination does not mean that adjacent local governments or other interested persons have veto power over the City's ability to enact plan amendments. City of West Palm Beach et al. v. Department of Community Affairs et al., 2005 Fla. ENV LEXIS 191 at \*34, DOAH Case Nos. 04-4336GM, 04-4337GM, and 04-4650GM (DOAH July 18, 2005, DCA Oct. 21, 2005). Rather, the City needs only take into consideration input from interested persons. Id. at \*35.

71. The City established that pursuant to its Resolution No. 00-320, before any resolution, ordinance, or issue affecting the Miami River is considered, the City Manager is required to inform the Miami River Commission (MRC) of that impending matter. The MRC serves as a clearinghouse for all interests of the Miami River, including residential, economic, and industrial interests, as well as the other entities listed in the Objective. See §§ 163.06 et seq., Fla. Stat. The evidence shows that the MRC was notified before the amendment was

considered, and that it provided a recommendation to the Commission. The MRC's input consisted of a 7-6 vote that the FLUM amendment was inconsistent with the UIP. As indicated, this voted was purely advisory, and there was no vote on whether the FLUM amendment was consistent with the City's Comprehensive Plan.

72. While ruled not relevant in Case Nos. 06-0759GM and 04-2754GM, Goal PA-3 states that the Port of Miami River "shall be encouraged to continue operation as a valued and economically viable component of the city's maritime industrial base." Unlike in those cases, there was no expert land use testimony as to whether the FLUM Amendment in this case is inconsistent with the objectives of the Port of Miami River Sub-element that are directed at preserving and encouraging growth of the marine industry on the river because it impacts the "economic viability of the marine industries" by "invi[te] speculation [on land] that makes it impossible for that industry to expand." Mr. Payne testified in this case that the FLUM Amendment will negatively impact the marine industry on the Miami River, primarily because there is a shortage of dockage space. Mr. Payne further testified that land is needed for expansion of the marine industry.

73. Notwithstanding Mr. Payne's testimony, Petitioners presented no evidence demonstrating that the FLUM Amendment will



negatively impact the viability of the maritime industry. Mr. Payne, who is not a land use expert, conducted no analysis of the needs of the neighborhood in the area of Intervenor's property. Mr. Payne did not testify as how many jobs were available when Intervenor's Property was used for marine businesses some four-to-five years ago, or how many jobs will result from the FLUM Amendment.

74. The City has no policy of "land banking" (i.e., reserving land for future growth and expansion of a particular use), nor does the Comprehensive Plan include such a policy. The UIP advocates "land banking" of waterfront industrial lands by the marine industry. But there was no evidence that either Mr. Payne or MRMG sought to purchase Intervenor's Property for that purpose. Indeed, the evidence was that Intervenor bought its property after several years of inactivity had turned the property into an eyesore.

75. If Goal PA-3 is relevant, the issue would be whether the FLUM Amendment is consistent with it. Internal consistency does not require that a local comprehensive plan provision "further"--i.e., take action in the direction of realizing-- every other goal, objective, and policy in the plan. Contrast § 163.3177(10)(a), Fla. Stat. (defining consistency of local comprehensive plan with regional and state comprehensive plans). It is enough if a plan provision is "compatible with"--i.e.,

does not conflict with--other goals, objectives, and policies in the plan. See Cooper v. City of St. Petersburg, ACC-92-004, DOAH Case No. 90-8189GM, 1992 Fla. ENV LEXIS 111, \*51 (ACC July 21, 1992; DOAH RO Dec. 13, 1991). A fortiori, a FLUM amendment need not "further" comprehensive plan goals, and it was not proven that the FLUM Amendment in this case conflicts with Goal PA-3, even assuming the goal applies and is relevant.

j. Data and analysis

76. Petitioners contend that the FLUM amendment in this case was not based on the best available, professionally acceptable, data and analysis, as required by Florida Administrative Code Rule 9J-5.005 and Section 163.3177, Florida Statutes. However, they presented no testimony from a land use expert to support their contention.

77. Petitioners contend that the City was required to conduct a housing and industrial needs assessment before adopting the FLUM amendment. The City did not conduct a formal, amendment-specific assessment of the need for residential or industrial lands, or specifically, of the need for housing. It was not required to do so because Intervenor's Property is located within the City's urban infill area. The DCA may require a housing needs assessment if the proposed FLUM amendment will result in urban sprawl. But Petitioners did not present any evidence to prove allegations of urban sprawl (which

would have had to result somehow from denser residential development within the urban infill area).

78. The principal considerations for the City's decision to adopt a land use change are the provisions of the Comprehensive Plan and additional criteria set forth in the City's code. The City's analysis of the FLUM Amendment took into consideration that Intervenor's property is surrounded by low and medium density residential.

79. The City primarily reviewed the Comprehensive Plan, Data and Analysis (Volumes II), the MRMP and the data contained in the City's Legistar system to determine whether the FLUM Amendment was consistent with the goals, objectives, and policies of the Comprehensive Plan.

80. The City's determination of consistency was properly based upon a finding that the FLUM amendment would minimize potential land use conflicts in the area, taking into consideration that Intervenor's property abuts low density residential on two sides.

81. In its analysis, the City noted that Intervenor's property was surrounded by lower density residential uses on two sides and industrial use on one side and, further, that the property itself was not all Industrial; it contains portions that were and remain designated Medium Density Multi-family Residential. The City's analysis of the FLUM Amendment noted

that the two different designations on the property at present are mutually exclusive in what they permit. The Medium Density Multi-family Residential designation permits some accessory commercial uses to the principal use of residential; the Industrial designation allows commercial uses as its principal use, but specifically excludes residential. In order to revitalize and redevelop the property, it was necessary to change one of the land use designations.

82. The City also determined in its analysis of the FLUM Amendment that the Restricted Commercial designation, a mixed-use classification, was a more flexible classification for the introduction of mixed uses to the area. Additionally, the City found that the Restricted Commercial designation functions as a transitional district between the industrial use and the residential use, which promotes good urban infill in the Middle River.

83. Balancing all the factors in the Comprehensive Plan, the City found the FLUM Amendment consistent because the Restricted Commercial land use designation permits an array of uses that promote economic development.

84. The City considered adequate data and analysis in its decision, including: documentation submitted by Brisas which consisted of its application, property survey, property deed, photographs of the property, and disclosure of property

ownership; a future land use map of the area; a legal description of the property; City staff analysis of the proposed land use change; the recommendation of the City's Planning Advisory Board; an aerial photograph of the area; proposed draft legislation amending the Comprehensive Plan; a school impact analysis; and the recommendation of the Miami River Commission.

85. In support of their argument that the FLUM Amendment at issue is not supported by data and analysis, Petitioners in their PRO cited to parts of the MRMP, to the UIP, and to 2005 legislation establishing the "Waterfronts Florida Program" and amending Section 163.3177(6)(a), Florida Statutes. (Other material cited in their PRO was not in evidence in this case.) The MRMP and UIP already have been discussed. As for the legislation, it requires coastal counties to include in the future land use elements of their comprehensive plans "regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts as defined in s. 342.07." By its terms, the legislation applies to counties, is not self-implementing, and adds nothing to the City's plan provisions. In addition, Restricted Commercial allows water-dependent and water-related uses, as defined by Section 342.07(2), Florida Statutes.

86. As indicated, Petitioners also contend that the City ignored certain data which shows that the FLUM Amendment

disrupts an existing land use pattern supporting water-dependent uses. However, as also noted above, the City performed an extensive land use study to consider, among other things, these very concerns and concluded that the new land use designation is compatible with adjacent properties and consistent with the Plan.

87. For the foregoing reasons, Petitioners failed to prove that the FLUM Amendment is not supported by professionally acceptable data and analysis, or that the City failed to react to data and analysis in an appropriate manner.

#### CONCLUSIONS OF LAW

88. Since this is a small-scale amendment, Section 163.3187(3)(a), Florida Statutes, applies and provides:

In the proceeding, the local government's determination that the small scale development amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this Act.

See Denig v. Town of Pomona Park, DOAH Case No. 01-4845GM, 2002 Fla. ENV LEXIS 220 at \*7-8 (DOAH June 18, 2002; Admin. Comm. Oct. 23, 2002). This statutory burden of proof has been applied in this proceeding.

89. Relevant here, "in compliance" means consistent with the requirements of Sections 163.3177, 163.3178, and 163.3180, Florida Statutes, and Florida Administrative Code Chapter 9J-5. See § 163.3184(1)(b), Fla. Stat.

90. Because it neither owns nor operates a business within the City of Miami, DPNA failed to establish that it has standing to participate in the instant proceeding. See § 163.3184(1)(a), Fla. Stat. However, the other Petitioners have standing because they own or operate a business within the City of Miami and submitted oral or written comments, recommendations, or objections to the local government during the appropriate comment time period. Intervenor also has standing.

91. As described in the Preliminary Statement and Findings of Fact, many of Petitioners' allegations were stricken or were precluded by principles of collateral estoppel or stare decisis. See Payne, et al. v. City of Miami, et al., Final Order Number DCA06-GM-214, DOAH Case No. 06-0759GM, (DOAH Aug. 2, 2006; DCA August 31, 2006); Payne, et al. v. City of Miami, et al., Final Order Number DCA06-GM-132, DOAH Case No. 04-2754GM, 2006 Fla. ENV LEXIS 75 (DOAH May 16, 2006; DCA June 21, 2006). As for remaining allegations, Petitioners failed to prove by a preponderance of the evidence that the FLUM Amendment either is inconsistent with the City's Comprehensive Plan, as prohibited by Section 163.3187(2), Florida Statutes; or is not based upon

adequate data and analysis, as prohibited by Florida Administrative Code Rule 9J-5.005(2) and Section 163.3177(8), Florida Statutes. Petitioners also failed to prove any of their other allegations. For these reasons, it is concluded that the City's determination that the FLUM Amendment is in compliance must be sustained. See Denig, supra.

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 small scale development plan amendment adopted by Ordinance No. 12776 is in compliance.

DONE AND ENTERED this 25th day of September, 2006, in Tallahassee, Leon County, Florida.



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Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of September, 2006.



ENDNOTES

<sup>1/</sup> The Ordinance was adopted by the City Commission on February 23, 2006, and signed by the Mayor on March 2, 2006, which is the date of adoption by the City. See Herbert Payne, et al. v. City of Miami, et al., 913 So. 2d 1260 (Fla. 3d DCA 2005).

<sup>2/</sup> All statutory references are to Florida Statutes (2005).

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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.