

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE VIZCAYANS, INC., a florida)	
not-for-profit corporation;)	
GROVE ISLE ASSOCIATION, a)	
florida not-for-profit)	
corporation; CONSTANCE STEEN;)	
JASON E. BLOCH; and GLENCOE)	
NEIGHBORHOOD ASSOCIATION, INC.,)	
a florida not-for-profit)	
corporation,)	
)	
Petitioners,)	
)	
vs.)	Case Nos. 07-2498GM
)	07-2499GM
CITY OF MIAMI,)	
)	
Respondent,)	
)	
and)	
)	
TRG-MH VENTURE, LTD, and MERCY)	
HOSPITAL, INC., a not-for-)	
profit florida corporation,)	
)	
Intervenors.)	
_____)	

SUPPLEMENT TO RECOMMENDED ORDER AFTER REMAND

On October 20, 2008, the Administration Commission entered an Order of Remand in this case. The Order of Remand ruled, as a matter of law within the Administration Commission's substantive jurisdiction over Sections 163.3184 and 163.3187, Florida Statutes, that the "fairly debatable" standard of proof cited in Finding of Fact 70 and Conclusions of Law 78, 79, 80, and 84 of the Recommended Order entered on July 10, 2008, was incorrect and that the "preponderance of the evidence" standard should have

been used, which requires "reapplying the correct standard of proof to the Findings of Fact containing the incorrect standard of proof and reweighing the evidence." Based on that ruling, the case was remanded "for further proceedings consistent with" the Order of Remand.

Based on the Order of Remand, the consistency of Ordinance 12911 with the Miami Comprehensive Neighborhood Plan (MCNP) has been reconsidered, using the preponderance of the evidence standard of proof. Based on this reconsideration, Finding of Fact 70 of the Recommended Order is amended to read:

70. Petitioners contend that the FLUM Amendment adopted by Ordinance 12911 is inconsistent with numerous MCNP goals, objectives, and policies.

(a) Most of the goals, objectives, and policies cited by Petitioners provide authority or set standards or guidance for the adoption of land development regulations (LDRs) and development orders, or require continued enforcement of LDRs, and do not apply to the FLUM Amendment. Petitioners did not prove by a preponderance of evidence that the FLUM Amendment is inconsistent with those MCNP provisions.

(b) A few of the MCNP provisions cited by Petitioners require compatibility of land uses, and Petitioners failed to prove by a preponderance of the evidence that the FLUM Amendment is incompatible with surrounding land uses or is inappropriate. See Finding of Fact 60, supra. Petitioners did not prove by a

preponderance of evidence that the FLUM Amendment is inconsistent with those MCNP provisions.

(c) A few of the MCNP provisions cited by Petitioners relate to the Coconut Grove Neighborhood Conservation District, which does not apply to the FLUM Amendment. See Finding of Fact 53, supra. Petitioners did not prove by a preponderance of evidence that the FLUM Amendment is inconsistent with those MCNP provisions.

(d) Policy LU-1.1.11 is the City's designation of the entire City, excluding Virginia Key, Watson Island, and the uninhabited islands of Biscayne Bay, as an Urban Infill Area. The Policy further states that "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." The FLUM Amendment site is not within a listed activity center or commercial center, and the FLUM Amendment does not further this priority (or other similar priorities relating to LDRs, such as Policy LU-1.1.10, Policy HO-1.1.9, and Policy HO-2.1.4), but it does not conflict with any of those provisions, and Petitioners did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with any of them.

(e) Goal LU-2 states that the City should preserve and protect the heritage of the City of Miami through the identification, evaluation, rehabilitation, adaptive reuse, restoration and public awareness of Miami's historic, architectural and archaeological resources. Objective LU-2.4 states that the City should increase the number of historic structures that have been preserved, rehabilitated or restored, according to the U.S. Secretary of the Interior's Standards for Rehabilitation. Policy LU-2.4.4 states that the City will continue to work with other local governments that have title to properties of major historic or architectural significance to ensure the conservation, preservation and adaptive and sensitive reuse of such properties. Petitioners did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with any of those provisions.

(f) Goal TR-1 states that the City will maintain an effective and cost-efficient traffic circulation network. Objective TR-1.1 provides that roadways will operate at the appropriate designated level of service. While it was proven that there was insufficient data and analysis to determine whether the FLUM Amendment would result in compliance with those provisions, Petitioners did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with them.

(g) Goal PR-1 is to "[p]rovide adequate opportunities for active and passive recreation to all city residents." Objective

PR-1.1 is to "[i]ncrease public access to all identified recreation sites, facilities, and open spaces including the Miami River and beaches and enhance the quality of recreational and educational opportunities for all age groups and handicapped persons within the city's neighborhoods." Petitioners did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with these provisions. (Policies PR-1.1.11 and PR-1.1.13 apply to LDRs.)

(h) Goal CM-1 is to maintain, protect, and enhance the quality of life and appearance of Miami's coastal zone including the preservation of natural resources as well as the enhancement of the built environment. Objective CM-1.1 is to preserve and protect existing natural systems, including wetlands, the beach/dune system of Virginia Key and Biscayne Bay, and improve water quality in the Miami River, its tributaries, and the Little River. Objective CM-1.4 relates to LDRs, but Policy CM-1.4.1 states: "The coastal zone of the city will adhere to the level of service standards as adopted and amended in the Capital Improvements Element, and more specifically Policy CI-1.2.3." CM-2 is to improve public awareness, appreciation, and use of Miami's coastal resources by preserving traditional water-dependent and water-related uses, ensuring adequate public access to such uses, and minimizing user conflicts. Objective CM-2.1 is to increase visual and physical access to Biscayne Bay and the city's shoreline, where feasible. Goal CM-4 is to ensure public

safety and the protection of property within the coastal zone from the threat of hurricanes. Objective CM-4.3 is to "ensure that capital expenditures in the coastal do not encourage private development that is subject to significant risk of storm damage." Policy CM-4.3.1 to limit public expenditures for capital facilities in the coastal high hazard area to "those required to eliminate existing LOS deficiencies, maintain adopted LOS standards in non-high hazard areas, improve hurricane evacuation time, or reduce the threat to public health and safety from storm events. (See Capital Improvements Policy 1.4.1.)" Goal CM-5 and Objective CM-5.2 are similar to Goal LU-2 and Objective LU-2.4, supra. Like Policies PR-1.1.11 and PR-1.1.13, Objective CM-1.2, Policies CM-2.1.1 and CM-2.1.7 apply to LDRs, not to the FLUM Amendment. While it was proven that there was insufficient data and analysis to determine whether the FLUM Amendment would result in compliance with Objective CM-4.3 and Policy CM-4.3.1, Petitioners did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with them, or with any of the other Coastal Management Element provisions.

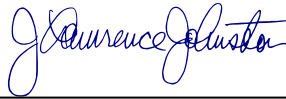
(i) Goal NR-1 is to "[m]aintain, preserve, enhance, and restore the quality of natural resources within the context of the city's urban environment." Objective NR-1.1 is to "[p]reserve and protect the existing natural systems within Virginia Key, the Dinner Key spoil islands, and those portions of Biscayne Bay that lie within the City's boundaries." Petitioners

did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with those provisions. (Policy NR-1.1.6 applies to LDRs, not to the FLUM Amendment.)

(j) The Vizcayans' proposed recommended order cites to Goal CI-1 and Objectives CI-1.1, CI-1.2, CI-1.3, and CI-1.4. These inconsistencies were not alleged in the petitions, and were waived, except to the extent that they are incorporated in other alleged inconsistencies with MCNP provisions--namely, with Objectives CM-1.4 and CM-4.3--which already have been addressed. In any event, Objective CI-1.2 applies to LDRs, not the FLUM Amendment; and while it was proven that there was insufficient data and analysis to determine whether the FLUM Amendment would result in compliance with some of these provisions, Petitioners did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with them.

(k) Finally, Petitioners did not prove by a preponderance of the evidence that the FLUM Amendment is inconsistent with the MCNP as a whole.

DONE AND ENTERED this 24th day of October, 2008, in
Tallahassee, Leon County, Florida.



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this 24th day of October, 2008.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Supplement to Recommended Order After Remand. Any exceptions to this Supplement to Recommended Order After Remand should be filed with the agency that will issue the Final Order in this case.