

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THE JENSEN BEACH GROUP, INC.;	)	
ANTHONY J. PARKINSON, MICHAEL	)	
CILURSO; CINDY AND DAVID BULK;	)	
CAMDEN GRIFFIN, GLENDA BURGESS;	)	
JOSEPH BURGESS; THOMAS FULLMAN;	)	
MARGUERITE HESS; HENRY	)	
COPELAND; and JACQUELINE	)	
TRANCYNGER,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 07-5422GM
	)	
MARTIN COUNTY and DEPARTMENT OF	)	
COMMUNITY AFFAIRS,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
REILY ENTERPRISES, LLC, WILLIAM	)	
REILY and NANCY REILY,	)	
	)	
Intervenors.	)	
_____	)	

RECOMMENDED ORDER

On May 13-15, 2008, a final administrative hearing was held in this case in Stuart, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether Amendment 06-19 to the Martin County Comprehensive Plan (the Plan), adopted by Ordinance 757 on August 7, 2007, is "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (2007)<sup>1</sup>.

PRELIMINARY STATEMENT

The Petition for Administrative Hearing (Petition) in this case was filed on October 24, 2007. On November 29, 2007, the Department of Community Affairs (Department or DCA) referred the petition to the Division of Administrative Hearings (DOAH), which assigned Case No. 07-5422GM. The unopposed interventions by Reily Enterprises, LLC, William Reily, and Nancy Reily were

granted on February 8, 2008. The final hearing was held in Stuart on May 13 through 15, 2008.

At the final hearing, the following witnesses were called: Richard Lawton, a Planner II with Martin County; Nicki van Vonno, Martin County's Growth Management Director; Bob Dennis, the Department's Regional Planning Administrator; Don Cuozzo of the Houston Cuozzo Group, a consulting planner for the Intervenors; Intervenor, William Reily, an owner of the property in question and a principal in Intervenor, Reily Enterprises, LLC; Terry Hess, a Regional Planner and Deputy Directory with the Treasure Coast Regional Planning Council (the RPC); Anthony Parkinson; Michael Cilurso, individually and as president of the Jensen Beach Group; Cindy Bulk, individually and as Secretary of the Jensen Beach Group; David Bulk; Camden Griffin; Glenda Burgess; Thomas Fullman; Marguerite Hess; Henry Copeland; and Jacqueline Trancynger.

At the final hearing, the following exhibits were admitted in evidence: County Exhibits 1-6 and 8-13; DCA Exhibits 1-4; Intervenors' Exhibits 12b, 24, 31, 52, 65A-J, and 66A-J; and Petitioners' Exhibits 2-5, 23-26, 29, 30, and 34. In addition, the objection to Petitioners Exhibit 28 is overruled, and it also is admitted in evidence.

After presentation of evidence, no transcript was prepared, and the parties requested until May 30, 2008, to file proposed recommended orders (PROs), which was granted. The timely PROs

have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Future Land Use Map (FLUM) Amendment 06-19 to the Plan changes the future land use on 13.7 acres in Jensen Beach, Florida, known as Pitchford's Landing, from Mobile Home to Low Density Residential.

2. The County's Mobile Home future land use designation allows mobile home sites up to a maximum of eight units per acre. The County's Low Density Residential future land use designation allows single family residences--including Class A manufactured single-family mobile homes--up to a maximum of five units per acre. The Plan defines Class A manufactured single-family homes as mobile homes built after June 15, 1976, and meeting certain federal standards. As a result of the FLUM Amendment, the future land use no longer would allow mobile homes built before June 15, 1976, or not meeting the federal standards.

#### The Petitioners' Challenge

3. The Petitioners contend that the FLUM Amendment is not in compliance because it is not based on adequate data and analysis as required by Section, 163.3177(8), Florida Statutes, and Florida Administrative Code Rule<sup>2</sup> 9J-5.005(2)(a), and because it is not internally consistent with goals, objectives, and policies of the Plan with respect to providing adequate sites for mobile homes and affordable housing for low and moderate income

residents as required by Section 163.3177(2), Florida Statutes, and Rule 9J-5.005(5).

4. The Petitioners further contend the amendment is inconsistent with requirements of the Plan, the State Comprehensive Plan, and Rule Chapter 9J-5 related to affordable housing, concurrency, and water supplies.

Pertinent Plan Provisions

5. The Housing Element of the Plan acknowledges that the State Comprehensive Plan includes goals and policies "aimed at increasing Florida's affordable housing supply." Plan Section 6.1.A.

6. The following goals, objectives, and policies are set out in the Housing Element:

Section 6.4.A. *Goal*. The provision of a safe, diverse and affordable housing stock which is adequate to serve the needs of current and future populations of Martin County consistent with the desired development character of the County as set forth in Martin County's Comprehensive Growth Management Plan.

Section 6.4.A.2.d.(2). *Policy*. Principles for Conservation and Rehabilitation Activities. The following principles shall guide the development of any housing conservation and/or rehabilitation activities . . . Avoid the closure or abandonment of housing and the displacement of occupants, except where the safety of the occupants would be in question.

Section 6.4.A.5. *Objective*. The County shall continue to provide adequate sites for housing for very low, low and moderate income households which currently reside and are

projected to reside in unincorporated Martin County.

Section 6.4.A.6. *Objective.* Martin County shall continue to provide adequate sites for mobile and manufactured housing.

a. *Policy: Adequate sites for mobile and manufactured homes.* Martin County shall permit the placement of mobile homes in mobile home parks and subdivisions consistent with the criteria and guidelines established in section 4.4.M.1(d)(6) of the Future Land Use Element of the Comprehensive Growth Management Plan.<sup>3</sup>

Section 6.4.A.9.a. *Policy: Plan for a broad mix of housing opportunities.* Encourage the provision of varied housing types, sizes and prices consistent with the local need, including very low, low and moderate priced housing.

7. The Future Land Use Element of the County's Plan contains the following goals, objectives, and policies:

Section 4.4.A.3. *Objective.* Martin County shall establish a "concurrency management system" which will establish the procedures and/or process that the county government will utilize to assure that no development orders or permits will be issued which result in a reduction of the adopted level of service standards of this Growth Management Plan at the time that the impact of development occurs.

e. *Policy:* All requests for amendments to the future land use maps shall include a general analysis of the availability and adequacy of public facilities and the level of services required for public facilities the proposed land uses . . . . Compliance with this provision is in addition to, and not in lieu of, compliance with the provisions of Martin County's Concurrency Management System . . . .

f. *Policy:* The maintenance of internal consistency among all elements of the plan shall be a prime consideration in evaluating all requests for amendments to any elements of the plan . . .

Section 4.4.I. *Goal (residential land use):* Martin County shall provide for appropriate and adequate lands for residential land uses to meet the housing needs of the anticipated population and provide residents with a variety of choices in housing types and living arrangements throughout the county.

Section 4.4.I.2.a.(1). Residential zoning classifications shall, at a minimum, be designed for single-family, multifamily, and mobile home and manufactured housing development to meet the housing needs demonstrated in the Housing Element (Chapter 6) of this Growth Management Plan.

Section 4.4.M.1.f. *Policies (Residential development).* The Land Use Map allocates residential density based on population trends; housing needs; past trends in the character, magnitude, and distribution of residential land consumption patterns; and, pursuant to goals, objectives and policies of the Comprehensive Growth Management Plan, including the need to provide and maintain quality residential environments, preserve unique land and water resources and plan for fiscal conservancy.

(6) *Mobile and Manufactured Single-Family, Class A home development.* Mobile homes and manufactured homes, Class A, residential development shall be permitted consistent with State Rules and statutory provisions including F.S. §§ 320.823, 553.38(2). Mobile homes which do not meet the standard for manufactured housing, Class A, as defined in this Element shall be permitted only on sites appropriately zoned for mobile home development.

Adequate Mobile Homes Sites

8. The FLUM Amendment reduces the amount of land available for mobile homes that are not Class A manufactured single-family homes. It also reduces the density of Class A manufactured single-family homes allowed on the Pitchford's Landing site to five from eight units per acre. However, the Petitioners failed to prove beyond fair debate that the FLUM Amendment is internally inconsistent with Plan provisions requiring adequate sites for mobile homes, or for affordable housing for very low, low, and moderate income residents. The Petitioners also failed to prove beyond fair debate that, as a result of the FLUM Amendment, the Plan fails to provide adequate sites for mobile homes, or for affordable housing for very low, low, and moderate income residents.

#### Data and Analysis

9. The data and analysis supporting the FLUM Amendment included the existence of 89 acres of land in Martin County that is designated Mobile Home but is vacant. (There also is a large amount of vacant land designated Low Density Residential that can be used for Class A manufactured homes.)

10. There was evidence that the amount of vacant land designated Mobile Home has decreased from the 187 acres reported to exist in January 2003. Some of that decrease was the result of conversions to other future land uses. It is not clear from the evidence what part of the decrease might have been from the use of formerly vacant land.



11. As a result of the real estate boom in 2001-2005, Martin County began to experience the conversions of mobile home parks to more expensive (and more profitable) housing. In addition, the general increase in real estate prices also increased the cost of the more affordable housing that did not convert. As a result of concerns about those developments, Martin County began investigating and developing a strategy to continue to meet its requirements for affordable and workforce housing. One possible strategy under consideration was a "no net loss" of land zoned Mobile Home Park.

12. As part of this effort, on June 5, 2007, Martin County adopted Ordinance 751, which imposed an interim moratorium for the month of September 2007 on private applications to convert Mobile Home to any other future land use categories. Ordinance 751 also imposed an 18-month moratorium on rezoning of land designated for Mobile Home future land use.

13. By its terms, Ordinance 751 does not prohibit the FLUM Amendment in this case.

14. The data and analysis supporting the FLUM Amendment included the proximity of the Pitchford's Landing site to the coastal high hazard area (CHHA). It is to the west and just across Indian River Drive from a narrow strip of land along the Indian River, which is in the CHHA. Although the evidence was that there has not been significant damage to the site itself

from recent storms, the eastern half of the site is in the Category 3 and Category 5 "storm surge zones."

15. The data and analysis supporting the FLUM Amendment included the compatibility of Low Density Residential future land use with the surrounding uses. The narrow strip along the Indian River to the east of the Pitchford's Landing site across Indian River Drive is designated Commercial Limited, as is the property to the north of the eastern half of the site. The property to the south of the eastern half of the site is designated Mobile Home but is actually under development as a "mixed use" planned unit development within the Jensen Beach Community Redevelopment Area. The property to the north and west of the western half of the site is designated Low Density Residential, while the property to the south of the western half is designated Mobile but actually is undeveloped and covered with trees and other vegetation.

16. The data and analysis supporting the FLUM Amendment included the opinions of planning experts that Low Density Residential future land use is more appropriate than Mobile Home future land use for the Pitchford's Landing site.

17. The data and analysis supporting the FLUM Amendment included the existence of potable water service with sufficient capacity for the Pitchford's Landing site provided by the Martin County Utilities and Solid Waste Department.

18. The data and analysis supporting the FLUM Amendment included the existence of sanitary sewer lines with sufficient capacity in the public right-of-way immediately adjacent to the Pitchford's Landing site that can be easily accessed for sanitary sewer service provided by the Martin County Utilities and Solid Waste Department.

19. The data and analysis supporting the FLUM Amendment included the existence of other public services with sufficient capacity, such as fire protection, hospitals, parks and recreational facilities, and schools.

20. The data and analysis supporting the FLUM Amendment included the absence of wetlands or other environmentally sensitive areas on it, according to the Martin County Soil Survey and photographs of the site, as well as the absence of any rare, endangered, or threatened species of animals or plants.

21. Several Petitioners expressed a concern about the lack of data and analysis on the impact of the FLUM Amendment on the surficial aquifer they use for potable water. Specifically, their concern is that the FLUM Amendment will decrease aquifer recharge on the Pitchford's Landing site and increase its use of the aquifer for lawn irrigation. However, there was no evidence tending to prove how converting the future land use designation from Mobile Home (at up to eight units per acre) to Low Density Residential (at up to five units per acre) would have such an impact. To the contrary, there was evidence that there are

existing permits from the South Florida Water Management District to use a fixed amount of water from the surficial aquifer for lawn irrigation on the Pitchford's Landing site. There was no evidence that more water would be required by a conversion of the future land use from Mobile Home to Low Density Residential. If more water is required, any increase in the use of the water from the surficial aquifer would have to be permitted by SFWMD.

22. The Petitioners failed to prove beyond fair debate that the FLUM Amendment is not supported by data and analysis.

State Comprehensive Plan

23. Petitioners contend that the FLUM Amendment is inconsistent with the following parts of the State Comprehensive Plan:

(7) *WATER RESOURCES*

(a) *Goal.*--Florida shall assure the availability of an adequate supply of water for all competing uses deemed reasonable and beneficial and shall maintain the functions of natural systems and the overall present level of surface and ground water quality . . .

(b) *Policies*

1. Ensure the safety and quality of drinking water supplies and promote the development of reverse osmosis and desalinization technologies for developing water supplies.

2. Identify and protect the functions of water recharge areas and provide incentives for their conservation.

\* \* \*

5. Ensure that new development is compatible with existing local and regional water supplies.

\* \* \*

9. Protect aquifers from depletion and contamination through appropriate regulatory programs and through incentives.

10. Protect surface and groundwater quality and quantity in this state.

\* \* \*

§ 187.201(7), Fla. Stat.

24. The evidence did not prove that the FLUM Amendment is inconsistent with any of those provisions or that, as a result of the FLUM Amendment, the Plan as a whole is inconsistent with the State Comprehensive Plan.

#### Standing

25. All of the individual Petitioners reside in or own property in Martin County and submitted oral or written comments, recommendations, or objections to the County regarding the FLUM Amendment between the transmittal hearing (April 11, 2007) and the adoption hearing (August 7, 2007).

26. The Jensen Beach Group (JBG) consists of three individuals, two of whom were individual Petitioners. JBG was incorporated not-for-profit in May 2006 for the purposes of preserving and protecting "the quality of life for Jensen Beach, Florida, and Martin County residents through education and awareness" regarding development projects in Jensen Beach and Martin County, and of raising funds for that purpose "as well as

any and all lawful business." It also advocates interests related to maintaining the character of Martin County and Jensen Beach and quality of life for Jensen Beach residents before County commissions and boards.

27. There was no evidence that JBG owns property in Martin County.

28. The Intervenors own the property subject to the FLUM Amendment (and other property in Martin County) and have consistently recommended adoption of the FLUM Amendment.

#### CONCLUSIONS OF LAW

29. Section 163.3184(9), Florida Statutes, provides that when the Department has given notice of intent to find a comprehensive plan amendment to be "in compliance," "any affected person" can petition for an administrative hearing to challenge the decision.

#### Standing

30. Section 163.3184(1)(a), Florida Statutes, defines "affected person" to include:

the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each

person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

31. In this case, all of the parties are "affected persons" and have standing as parties.

Burden and Standard of Proof

32. Section 163.3184(9)(a), Florida Statutes, provides that when the Department has given notice of intent to find a comprehensive plan amendment to be "in compliance," those provisions "shall be determined to be in compliance if the local government's determination of compliance is fairly debatable." Since the Department gave such notice as to the FLUM Amendment at issue in this case, the Petitioners bear the burden of proving beyond fair debate that the FLUM Amendment is not "in compliance." See Young v. Department of Community Affairs, 625 So. 2d 831, 833-835 (Fla. 1993).

33. In recognition of the local nature of legislative land use decisions, the Florida Supreme Court has held that an amendment subject to the "fairly debatable" standard must be upheld "if reasonable persons could differ as to its propriety." Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997). See also B & H Travel Corp. v. Department of Community Affairs, 602 So. 2d 1362 (Fla. 1st DCA 1992), appeal dismissed and rev.

denied, 613 So. 2d 1 (Fla. 1992). In effect, the "fairly debatable" standard defers not only to the County's determination, but also to the Department's determination that the FLUM Amendment is "in compliance."

#### Compliance Criteria

34. Section 163.3184(1)(b), Florida Statutes, defines "in compliance" as:

Consistent with the requirements of ss. 163.3177, 163.31776 when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable.

Out of these compliance criteria, only Section 163.3177, Florida Statutes, and Florida Administrative Code Rule Chapter 9J-5 are pertinent to this case.

#### Internal Consistency

35. Section 163.3177(2), Florida Statutes, provides that the several elements of a comprehensive plan must be coordinated and consistent. Any amendment to the FLUM must be internally consistent with the other elements of the comprehensive plan. See Coastal Development of North Fla., Inc. v. City of Jacksonville, 788 So. 2d 204, 208 (Fla. 2001).



36. Petitioners failed to prove to the exclusion of fair debate that the FLUM Amendment is inconsistent or not coordinated with the several elements of the County's Plan.

Data and Analysis

37. The requirement for data and analysis to support a comprehensive plan and plan amendments is set forth in Florida Administrative Code Rule 9J-5.005(2)(a):

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

38. This rule requires only that data exist at the time the plan amendment is adopted. It does not even require that such data be submitted by the local government to the Department. In a de novo proceeding such as this one, the question is not whether the local government submitted sufficient data and analysis to the Department, but rather whether the data in existence at the time of adoption support the plan amendment. If the data existed at the time of adoption, analysis of that data may be made at the compliance hearing. Zemel, et al., v. Lee County and Dept. of Community Affairs, DOAH CASE NO. 90-7793GM, 1992 Fla. Div. Adm. Hear. LEXIS 5927, at \*71-76 (DCA June 22, 1993), aff'd, 642 So. 2d 1367 (Fla. 1st DCA 1994).

39. The Petitioners failed to prove to the exclusion of fair debate that the FLUM Amendment is not based on data and analysis.

#### State Comprehensive Plan

40. The State Comprehensive Plan establishes general goals and policy rather than the type of minimum criteria that are set forth in Chapter 9J-5. Many of the provisions of the State Comprehensive Plan apply to the State of Florida and its agencies in planning on the state level, as opposed to local governments. As a consequence, before a comprehensive plan amendment can be found inconsistent with the State Comprehensive Plan, careful consideration has to be given to the entirety of the more general plan, as well as to entirety of the local comprehensive plan. See § 163.3177(10)(a), Fla. Stat. (State Comprehensive Plan "shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and policies in the plans.")

41. Section 163.3177(10)(a), Florida Statutes, also states: "[F]or the purpose of determining whether local comprehensive plans are consistent with the state comprehensive plan and the appropriate regional policy plan, a local plan shall be consistent with such plans if the local plan is "compatible with" and "furthers" such plans. The term "compatible with" means that the local plan is not in conflict with the comprehensive plan or appropriate regional policy plan. The term "furthers" means to

take action in the direction of realizing goals or policies of the state or regional plan.

42. In this case, the Petitioners did not prove beyond fair debate that the FLUM Amendment was inconsistent with the State Comprehensive Plan.

RECOMMENDATION

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

RECOMMENDED that the Department of Community Affairs enter a final order determining that Martin County's FLUM Amendment 06-19 is "in compliance."

DONE AND ENTERED this 18th day of July, 2008, in Tallahassee, Leon County, Florida.



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J. LAWRENCE JOHNSTON  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of July, 2008.

ENDNOTES

- <sup>1/</sup> All statutory citations are to the 2007 codification.  
<sup>2/</sup> All rule references are to the Florida Administrative Code.

<sup>3/</sup> The reference to Section 4.4.M.1.(d)(6) is obsolete; the correct reference is Section 4.4.M.1.(f)(6).

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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