STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PATRICIA D. CURRY, ALEXANDRIA LARSON, SHARON WAITE, AND PATRICK WILSON,	)	
Petitioners,	)	
vs.	)	Case No. 09-1204GM
PALM BEACH COUNTY, FLORIDA AND DEPARTMENT OF COMMUNITY AFFAIRS,	)	
Respondents,	)	
and	)	
COCONUT NORTHLAKE, LLC, NORTHLAKE GROUP, LLC, AND RICHARD J. SLUGGETT AND PANATTON DEVELOPMENT COMPANY, LLC,	)	
Intervenors.	)	

RECOMMENDED ORDER

The final hearing in this case was held on August 17-21, 2009, in West Palm Beach, Florida, before Bram E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether the amendments to the Palm Beach County Comprehensive Plan adopted by Ordinances 2008-048, 2008-049, and 2008-050 are "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes (2008).[1/]

PRELIMINARY STATEMENT

On December 3, 2008, Palm Beach County adopted three amendments to its Future Land Use Atlas through the passage of Ordinances 2008-048, 2008-049, and 2008-050. The amendments change the future land use designations for three parcels of land. On February 10, 2009, the Department of Community Affairs issued its Notice of Intent to find the amendments "in compliance."

On February 27, 2009, Petitioners Patricia Curry, Sharon Waite, Alexandria Larson, and Patrick Wilson, filed a Petition for Administrative Hearing, challenging the Department's compliance determination. They were subsequently granted leave to amend their petition.

Coconut Northlake LLC, and Northlake Land Group, LLC (hereinafter collectively referred to as "Northlake"), Richard Sluggett, and Panattoni Development Company, LLC (Panattoni) were granted leave to intervene. Sluggett and Northlake demanded an expeditious hearing pursuant to Section 163.3189(3), Florida Statutes.

At the beginning of the final hearing, Petitioners moved to amend their petition again to include a claim that the amendments are inconsistent with the Strategic Regional Policy Plan of the Treasure Coast Regional Planning Council. Leave to amend was granted, but Petitioners were limited to presenting evidence on the matters addressed in the Planning Council's official comment letter.

At the final hearing, Panattoni filed a motion in limine to exclude Petitioners' expert witness, Dr. Edward Petuch. The motion was denied, but Dr. Petuch's testimony was limited to the opinions that he disclosed at his deposition.

At the final hearing, each Petitioner spoke on his or her own behalf and presented the testimony of Rosa Durando, Lorenzo Aghemo, George Webb, Jay Foy, and Dr. Edward Petuch. Petitioners' Exhibits 9, 17, 19, 20, 41, 44, 45, 48, 50, and 51 were admitted into evidence. Petitioners were allowed to proffer composite Exhibit 37.

The County presented the testimony of Erin Fitzhugh, Sussan Gash, and Allan Ennis. County Exhibits 1 through 4, 6a through 6o, 7, 8, 9a through 9c, 11 through 15, 17, 18, 19a through 19o, 20a through 20o, 21 through 37, 38a through 38o, 39a through 39o, 40 through 61, 62a through 62f, and 63 through 83.

The Department participated in the examination of witnesses but did not present witnesses or exhibits.

Sluggett testified on his own behalf and presented the testimony of Roger Wilburn, Bob Bentz, and Dr. Rick Warner. Sluggett Exhibits 7, 8, 12, and 20 were admitted into evidence.

Northlake presented the testimony of Roger Wilburn, Bob Bentz, and Dr. Rick Warner. Northlake Exhibits 7, 8, 11, 20, and Rebuttal Exhibit 1 were admitted into evidence.

Panattoni presented the testimony of Sam Pinson, Dodi Glass, James Fleischman, and Adam Kerr (misspelled "Curd" in the transcript.) Panattoni Exhibits 1 through 6 were admitted into evidence.

The nine-volume Transcript of the hearing was filed with DOAH. The County, Sluggett, Northlake, and Panattoni filed proposed orders which were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. The Department is the state land planning agency and has the statutory power and duty to review amendments to local comprehensive plans and determine whether the amendments are "in compliance," pursuant to Section 163.3184, Florida Statutes.

2. The County is a political subdivision of the State and has adopted a comprehensive plan that the County amends from time to time pursuant to Section 163.3187, Florida Statutes.

3. Patricia Curry, Alexandria Larsen, and Sharon Waite own property and reside in Palm Beach County. They made comments to the County regarding the three amendments during the period of time beginning with the transmittal hearing for the amendments and ending with the adoption of the amendments.

4. Patrick Wilson owns property and resides in Palm Beach County, but he presented no evidence at the final hearing to show that he made comments to the County on any of the challenged amendments.

5. Sluggett is the owner of the parcel that is the subject of the amendment adopted by Ordinance 2008-050 ("Sluggett Amendment"). He resides in Palm Beach County on the land affected by the amendment.

6. Coconut Northlake LLC and Northlake Land Group LLC are Florida corporations with their principal place of business in Palm Beach County. Coconut Northlake LLC is the owner of the property that is affected by the amendment adopted by Ordinance 2008-049 ("Northlake Amendment"). Northlake Land Group LLC has an option to purchase the property.

7. Panattoni is a Florida corporation that entered into a contract in 2006 to purchase the property affected by Ordinance 2008-048 ("Panattoni Amendment"). Panattoni was the applicant for the Panattoni Amendment. After the application was filed, Panattoni transferred its rights and obligations under its

contracts, including the contract to purchase the Panattoni Property, to Panattoni Development Company, Inc.

The Amendments

8. Ordinance 2008-50 (“Sluggett Amendment”) would change the future land use designation of a 64.48-acre parcel located at the northwest intersection of Southern Boulevard and Seminole Pratt Whitney Road (“Sluggett Property”) from Rural Residential 10 (one dwelling unit per 10 acres) to Commercial-Low/Rural Residential 5 (one dwelling unit per five acres).

9. Ordinance 2008-49 (“Northlake Amendment”) would change the future land use designation of a 30.71-acre parcel located on the southwest corner of Coconut Boulevard and Northlake Boulevard (“Northlake Property”) from Rural Residential 20 to Commercial-Low/ Rural Residential 5.

10. Ordinance 2008-48 (“Panattoni Amendment”) would change the future land use designation of a 37.85-acre parcel located on the south side of Lake Worth Road, 1,320 feet east of Lyons Road (“Panattoni Property”) from Low-Residential 2 to Commercial-High with an underlying 2 units per acre.

Findings Applicable to all Amendments

11. The County adopted a Managed Growth Tier System in 1999, which places all lands in the County into one of five tier classifications: Urban/Suburban, Exurban, Rural, Agricultural Reserve, and Glades. The tiers are intended to define distinct

geographical areas within the County that “allow for a diverse range of lifestyle choices, and livable, sustainable communities.”

12. None of the three amendments propose to change the Tier in which the affected properties are located. The new future land use designations created by the three amendments are allowable land uses within their respective tiers.

13. In the Department’s Objections, Recommendations, and Comments Report, following the transmittal of the three amendments, the Department objected to the amendments for the following reason:

> These amendments include statements or conditions that would limit development to a certain size, use, or intensity. Without these development limitations, one or more specific facilities (water supply, water and wastewater treatment, and road capacity) would not be available at the adopted level of service standards to serve these sites if they are developed at their maximum development potential. The County has not included these site specific limitations or conditions in a policy in the Future Land Use Element nor included a corresponding and appropriate notation on the Future Land Use Atlas to clearly indicate that development limitations apply to these sites.

The County addressed the Department’s objection by agreeing to place notations in its Future Land Use Atlas (FLUA) to indicate that the land uses on the properties affected by the amendments are subject to special limitations and conditions.

14. The three amendments affect properties located near the “Acreage” and “Loxahatchee,” which are areas of antiquated subdivisions that are suburban in nature and home to approximately 50,000 people. When these areas were first platted and developed, they were far to the west of the urbanized areas of the County, and had insufficient commercial uses in or around them to serve the residents. The planning studies that have been conducted for this central-western area of the County have consistently concluded that the area needs more commercial land uses to serve the residential population.

15. Today, there are only about 40,000 square feet of commercial uses in this central-western area of the County. Based on a planning ratio of 35 square feet of commercial uses per capita, about 1.5 million square feet of commercial uses would be needed to serve the residential population.

16. The Palm Beach County Comprehensive Plan requires applicants for a FLUA amendment to demonstrate consistency with Policy 3.5-d of the Future Land Use Element (FLUE), regarding traffic impacts. Policy 3.5-d requires a long-term traffic analysis based on the Metropolitan Planning Organization’s 2025 Long Range Transportation Plan (“Test One”) and a short-term, five-year traffic analysis based on the County’s five-year plan (“Test Two”).

17. Under Test One, if the traffic associated with an amendment to the FLUA would significantly impact a road that is projected to fail to operate at adopted level of service (LOS) standard “D” based on the 2025 Long Range Transportation Plan, the amendment cannot be adopted. In contrast, a failure to meet an LOS standard based on the County’s five-year plan -- Test Two -- can be remedied.

18. Under Test Two, if LOS standards on affected roads would not be maintained, the applicant must commit to make or fund additional road improvements to accommodate the traffic impacts associated with the future land use re-designation. Alternatively, an applicant could be required to develop the land in phases so that the traffic impacts associated with each development phase can be accommodated without exceeding the capacity of the roadways.

19. The County’s income from gas tax sources which are used to fund transportation improvements has decreased due to the nationwide downturn in the economy, and the decrease has affected the timing of some planned transportation improvements. However, the County has not abandoned the scheduled improvements for the roads that are affected by the challenged amendments.

20. Map LU 4.1 of the comprehensive plan depicts the public wellfield protection zones within the County and the Turnpike Aquifer Protection Overlay. These planning zones were

established to protect sources of public drinking water. The properties affected by the three amendments are located outside of these protection zones.

21. Petitioners presented no competent evidence that the three amendments, alone or in combination, would harm the sources of public drinking water. Petitioners' evidence was only sufficient to support the general proposition that more land development increases the potential for contamination of surface water and groundwater. The evidence did not establish that the three amendments, alone or in combination, create a measurable increase in the potential for contamination or pose a foreseeable threat of adverse impact to surface water or groundwater.

22. Petitioners' expert witnesses conceded that they had insufficient data and had conducted no specific studies to support an opinion that any of the amendments would cause harm to natural resources, generally, or to the aquifer, in particular.

Ordinance 2008-50, the Sluggett Amendment[2/]

23. The Sluggett Amendment would change the future land use designation of a 64.48-acre parcel located at the northwest intersection of Southern Boulevard and Seminole Pratt Whitney Road from Rural Residential 10 to Commercial-Low/Rural Residential 5.

24. The Sluggett Property is within the Rural Tier.

25. Southern Boulevard and Seminole Pratt Whitney Road are major arterial roadways.

26. The Commercial-Low designation limits building coverage to a maximum of 10 percent. On the Sluggett Property, that would equate to about 280,000 square feet of commercial development. However, the Sluggett Amendment contains a condition that further restricts the intensity of commercial development on the Sluggett Property to 161,000 square feet.

27. Residential density on the Sluggett Property is limited to 15 residential units, and is derived from the allowed density for the 64-acre parcel (12 units), plus three more units which are allowed under the County's Workforce Housing bonus program. The Workforce Housing bonus program allows an increase in density when some units will be developed as low or moderate income housing.

28. The Sluggett Amendment includes a condition that requires that the commercial and residential development on the Sluggett Property meet a Traditional Marketplace Development form. Traditional Marketplace Development is a development form that requires low intensity commercial and institutional uses, vertically integrated with residential uses, with a pedestrian orientation. This development form is achieved primarily

through the design and organization of buildings and public spaces and the dispersal of parking.

29. The Sluggett Amendment limits any single non-residential or commercial single tenant to a maximum of 65,000 square feet.

30. To the north of Sluggett Property are lands classified Rural Residential 5 and Rural Residential 2.5. To the east is Loxahatchee Groves, the County's newest municipality. Directly south, across Southern Boulevard, is land owned by the South Florida Water Management District. Southeast of the Sluggett Property is the incorporated Village of Wellington.

31. The Sluggett Property is separated from the Acreage community to the west by a stormwater drainage canal and 80-foot-wide stormwater drainage easement managed by Seminole Improvement District.

32. To provide compatibility with the residential areas north of the Sluggett Property, the Sluggett Amendment includes a condition that requires a minimum of ten acres of open space on the northern portion of the Sluggett Property.

33. Because the Sluggett Property is located at the intersection of two arterial roadways, it meets the siting requirement of FLUE Policy 1.4-f for commercial uses in the Rural Tier.

34. In prior planning studies in the central-western area of the County, the Sluggett Property was specifically identified as an appropriate location for neighborhood-serving commercial development.

35. The residential component of the Sluggett Amendment is supported by the Bureau of Economic and Business Research population projections and by other data and analyses in the record. The residential units are also necessary to achieve the preferred Traditional Marketplace Development form. The inclusion of residential units also serves to achieve the County's objective of increasing workforce housing.

36. The need for the Sluggett Amendment was adequately demonstrated.

37. The Sluggett Amendment is compatible with surrounding land uses.

38. The LOS standard for the affected roads would not be maintained if the Sluggett Property were developed at the maximum commercial intensity allowed under the proposed future land use designation (plus 15 dwelling units). This situation would cause the Sluggett Amendment to fail Test One of FLUE Policy 3.5-d, described above.

39. If development of the Sluggett Property is limited to 161,500 square feet of commercial, Test One is met. Therefore,

the Sluggett Amendment limits development of the Sluggett Property to 161,500 square feet or commercial.

40. The Sluggett Amendment includes two other conditions related to traffic to avoid potential roadway failures based on Test Two's five-year analysis. These conditions limit the development to 46,500 square feet of commercial, "until construction commences on the south approach of the intersection of Southern Boulevard and Big Blue Trace to provide for dual left turn lanes, or one through lane and dual right turn lanes."

41. The potential traffic impacts associated with the Sluggett Amendment have been addressed in a manner consistent with relevant provisions of the comprehensive plan.

42. Water and wastewater utilities are available to the Sluggett Property and there is adequate capacity to serve the Property.

43. School facilities, emergency medical services, and fire and police services are also available and adequate to serve the Sluggett Property.

44. Although Petitioners suggested that the Sluggett Amendment would cause stormwater drainage problems, no competent evidence was presented to demonstrate that a real threat of stormwater contamination exists or that any comprehensive plan provision related to stormwater would be violated.

45. In their petition for hearing, Petitioners claimed that the Sluggett Amendment meets the definition of urban sprawl, but included no specific factual allegation other than the amendment would allow “strip-type commercial development.”

46. The requirement of the Sluggett Amendment that ten acres of open space be set aside in the northern portion of the property, and the requirement to develop as a Traditional Marketplace Development prevents a strip development, as that term is normally applied in land use planning.

47. The Sluggett Property is somewhat distant from other commercial uses, a consequence of the poorly planned development of the residential subdivisions in the area. The Sluggett Amendment reduces a deficit in neighborhood-serving commercial uses and thereby remedies an existing imbalance of land uses caused by the past urban sprawl.

48. Treasure Coast Regional Planning Council determined that the Sluggett Amendment was consistent with the Council’s Strategic Regional Policy Plan. Petitioners did not show how the Sluggett Amendment causes an inconsistency with any provision of the Strategic Regional Policy Plan.

Ordinance 2008-49, the Northlake Amendment[3/]

49. The Northlake Amendment would change the future land use designation of a 30.71-acre parcel located on the southwest

corner of Coconut Boulevard and Northlake Boulevard from Rural Residential 20 to Commercial-Low/ Rural Residential 5.

50. The Northlake Property is in the Exurban Tier.

51. East of the Northlake Property, along Northlake Boulevard, are the residential communities of Bayhill Estates and Rustic Lakes, which were developed at a density of one unit per two acres and one unit per five acres, respectively. Farther east, is the large, gated golf course development called Ibis, which consists of approximately 2,000 units developed at 1.25 dwelling units per acre.

52. On the north side of Northlake Boulevard is a large tract of agricultural land located in the City of Palm Beach Gardens. Northeast are Osprey Isles and Carlton Oaks, which are residential developments with quarter-acre lots, and a cemetery and land designated for commercial low/office development.

53. South of the Northlake Property, across two-lane Hamlin Road, is the Acreage.

54. Existing and proposed institutional development in the vicinity of the Northlake Property include the adjacent parcel to the east, which is proposed to be developed as a 21,000-square-foot U.S. Post Office and, to the west, the existing Pierce Hammock Elementary School.

55. The comprehensive plan allows development of institutional uses in the Exurban Tier at intensities of up to

.20 Floor Area Ratio (FAR). The Northlake Amendment proposes development at less than half that intensity, .08 FAR.

56. The Northlake Property is located in an area that was the subject of a regional planning effort called the Western Northlake Corridor Study (WNCLUS) conducted by the county, the City of West Palm Beach, and the City of Palm Beach Gardens. The WNCLUS was completed in 1998 and is now being updated. In April 2008, an updated, intergovernmental analysis of the need for commercial uses in the study area concluded that the need exceeded the square footage of commercial uses that would be provided by the Northlake Amendment.

57. The Northlake Property is one of the few parcels in the area that meets the commercial land use siting criterion in FLUE Policy 1.3-f, having frontage on an arterial road and a collector road.

58. In their petition for hearing, Petitioners claimed that the Northlake Amendment meets the definition of urban sprawl, but included no specific factual allegation other than the amendment would allow “strip-type commercial development.”

59. The Northlake Amendment only affects one parcel. The amendment would not extend any existing commercial uses on Northlake Boulevard or Coconut Boulevard.

60. The applicant has agreed to record restrictive covenants on parcels owned by the applicant that are west of the

Northlake Property, which would remove any potential for their future development for commercial uses. Executed restrictive covenants and easements are being held in escrow by the County Attorney and would be recorded after the approval of the Northlake Amendment.

61. Although the Northlake Property is not integrated with other commercial uses, that situation is a consequence of the poorly planned development of the residential subdivisions in the area. The Northlake Amendment reduces a deficit in neighborhood-serving commercial uses and thereby remedies an existing imbalance of land uses caused by past urban sprawl.

62. The residential density allowed by the Northlake Amendment (one dwelling unit per five acres) conforms with the adjacent residential densities, which range from one unit per five acres to one unit per 1.25 acres.

63. The Northlake Amendment is compatible with surrounding land uses.

64. If the Northlake Property were developed at the maximum commercial intensity of 133,000 square feet, LOS standards on affected roadways would likely be exceeded. Therefore, the Northlake Amendment includes a condition that limits development to 106,566 square feet of commercial.

65. Water and wastewater utilities are available to the Northlake Property and there is adequate capacity to serve the property.

66. School facilities, emergency medical services, fire and police services are all available and adequate to serve the Northlake Property.

67. The Treasure Coast Regional Planning Council reported that it considered the Northlake Amendment to be inconsistent with the Strategic Regional Policy Plan, "unless and until the County updates the WNCLUS in coordination with the Cities of Palm Beach Gardens and West Palm Beach." The Council did not identify any specific provision of the Strategic Regional Policy Plan with which the Northlake Amendment was inconsistent.

68. The Council issued its comments without the opportunity to consider subsequent data and analysis that are included in the record of this case. For example, after the Council issued its report, the City of Palm Beach Gardens expressed support for the Northlake Amendment. In addition, the County planning staff's objections to the Northlake Amendment, which appeared to be the primary basis for the Council's finding of inconsistency, were subsequently refuted by the County's Planning Director.

Ordinance 2008-48, the Panattoni Amendment[4/]

69. The Panattoni Amendment would change the future land use designation of a 37.85-acre parcel located on the south side of Lake Worth Road, and 1,320 feet east of Lyons Road, from Low-Residential 2 to Commercial-High with an underlying 2 units per acre.

70. The Panattoni Property is within the Urban/Suburban Tier. The Urban/Suburban Tier is described in the Plan as "urban levels of service." The Urban/Suburban Tier is expected to accommodate about 90 percent of the County's population.

71. The Panattoni Property is also within the County's Urban Service Area. The Urban Service Area is the area in which the County anticipates the extension of urban services through the long range planning horizon.

72. The properties to the north, south, east, and west are designated Low Residential 2. There is an existing residential community to the west. The properties to the north, south, and east are vacant.

73. The Panattoni Amendment requires the property to be developed as a Lifestyle Commercial Center. The Lifestyle Commercial Center is similar to a Traditional Marketplace Development, being a mixed-use, pedestrian-friendly form of development. The Panattoni Amendment meets the commercial land use siting criteria in FLUE Policy 1.2-k.

74. The county planning staff anticipated that the surrounding vacant properties would be developed at a higher density than two units per acre through one or more of the county's density bonus programs.

75. The Panattoni Amendment includes a condition that at least five percent of the project must be designated as public open space as squares, greens, or plazas.

76. Parking must be dispersed through the site. The interconnected vehicular and pedestrian circulation system must provide on-street parking and access to transit stops and off-site pedestrian and bicycle systems where feasible.

77. The Panattoni Property be developed with building mass and placement to provide a spatial definition along streets. Additionally, the design must incorporate human-scale elements along streets and in common areas that includes seating, landscaping, lighting and water or art features.

78. No single tenant can exceed 100,000 square feet and cannot not be a "big box."

79. The Panattoni Amendment would not result in strip development.

80. The Panattoni Amendment is compatible with surrounding land uses.

81. Petitioners testified that a number of stores in the area have closed as evidence that the area does not need

additional commercial uses. A window survey of empty stores is not an accurate way to evaluate vacancy rates, in particular, or the need for commercial uses, generally.

82. Panattoni provided an adequate justification and demonstrated need for the 396,000 square feet of commercial uses authorized by the Panattoni Amendment.

83. The Panattoni Property is located in the tier in which the County has indicated it wants most of its development to occur. Petitioners presented no evidence that the Panattoni Amendment would cause urban sprawl.

84. There are adequate public services and infrastructure to accommodate the Panattoni Amendment.

85. The potential traffic impacts associated with the Panattoni Amendment were reviewed under the Test One and Test Two analyses. As to Test One, the traffic analysis shows that affected roads will not meet the LOS standard in 2025 at the maximum development intensity. Therefore, the Panattoni Amendment includes a condition that the development must be limited to 396,000 square feet of commercial use.

86. As to Test Two, the traffic analysis shows that all roads will operate at the adopted LOS standard if the project is limited to 65,000 square feet until construction has commenced for the recommended improvements at Lake Worth Road/Turnpike interchange. Therefore, the Panattoni Amendment includes this

condition on the development. Construction of the improvements has already commenced.

87. The Treasure Coast Regional Planning Council determined that the Panattoni Amendment is consistent with the Strategic Regional Policy Plan. Petitioners did not show how the Panattoni Amendment causes an inconsistency with any provision of the Strategic Regional Policy Plan.

CONCLUSIONS OF LAW

88. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Sections 120.569, 120.57(1), and 163.3184(9), Florida Statutes.

89. The Department has the statutory power and duty to review proposed and adopted local government comprehensive plan amendments to determine whether the amendment is "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.

90. It is not the role of the Department to determine whether an amendment is the best approach available to the local government for achieving the local government's purposes.

91. The term "in compliance" is defined in Section 163.3184(1)(b), Florida Statutes:

> In compliance means consistent with the requirements of ss. 163.3177, 163.3176, 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.

92. Petitioners did not claim that the amendments are inconsistent with Section 163.3178, 163.3191, or 163.3245, Florida Statutes. Petitioners' challenge focused on alleged inconsistency with the Palm Beach County Comprehensive Plan, Section 163.3177, Florida Statutes, and portions of Florida Administrative Code Chapter 9J-5.

Standing

93. In order to have standing to challenge a plan amendment, a challenger must be an "affected person," which is defined as a person who resides, owns property, or owns or operates a business within the local government whose comprehensive plan amendment is challenged. See § 163.3184(1)(a), Fla. Stat.

94. Petitioners Patricia Curry, Alexandria Larson, and Sharon Waite, and Intervenors Northlake and Sluggett have standing as affected persons.

95. Although Petitioner Patrick Wilson's standing is questioned because he did not present evidence at the final

hearing to show that that he made timely comments to the County about the amendments, the issue need not be discussed because of the standing of the other petitioners.[5/] See Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400, n.4 (Fla. 1996).

96. Petitioners challenged Panattoni's standing because sometime after this case was initiated, Panattoni transferred its rights to Panattoni Development Company, Inc. Rule 1.260(c) of the Florida Rules of Civil Procedure provides that, in the case of any transfer of interest, the action may be continued by or against the original party, unless the court on motion substitutes or joins the new entity. See Levine v. Gonzalez, 901 So. 2d 969 (Fla. 4th DCA 2005); Schmidt v. Mueller, 335 So. 2d 630 (Fla. 2d DCA 1976).

97. Based on the guidance provided by the civil rule, and because Panattoni Development Company, LLC, met the definition of "affected person" at the time of its intervention in this case, Panattoni has standing in this proceeding.

Burden and Standard of Proof

98. As the parties challenging the Department's "in compliance" determination, Petitioners have the burden of proving that the amendments are not in compliance. See Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993).

99. Because the Department determined that the amendments are "in compliance," the amendments shall be determined to be "in compliance" if the County's determination of compliance is "fairly debatable." See § 163.3184(1)(b), Fla. Stat.

100. The term "fairly debatable" is not defined in Chapter 163, Florida Statutes. In Martin County v. Yusem, 690 So. 2d 1288, 2195 (Fla. 1997), the court said, "The fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety." Quoting from City of Miami Beach v. Lachman, 71 So. 2d. 148, 152 (Fla. 1953), the Court stated further that "an ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point a logical deduction that in no way involves its constitutional validity."

101. Section 163.3177(2), Florida Statutes, and Florida Administrative Code Rule 9J-5.005(5)(a), require the elements of a comprehensive plan to be internally consistent. A plan amendment can only create internal inconsistency when the amendment conflicts with an existing provision of the comprehensive plan.

102. Petitioners failed to prove beyond fair debate that the amendments are inconsistent with any goal, objective, or policy of the Pal Beach County Comprehensive Plan.

103. Petitioners failed to prove that the amendments are inconsistent with any provision of Section 163.3177, Florida Statutes, including the requirement to demonstrate need for the amendments.

104. Florida Administrative Code Rule 9J-5.006(5)(g) sets forth 13 primary indicators that a plan or plan amendment fails to discourage the proliferation of urban sprawl. In addition to a consideration of the 13 primary indicators, an urban sprawl analysis requires a consideration of need, land uses, local conditions, and development controls. See Fla. Admin. Code R. 9J-5.006(5)(h)-(j).

105. Petitioners failed to prove that the amendments constitute a failure of the County to prevent the proliferation of urban sprawl.

106. All data in existence and available to a local government at the time of adoption of the plan amendment may be relied upon to support an amendment in a de novo proceeding. Zemel v. Lee County et al., 15 F.A.L.R. 2735 (Dept. of Community Affairs Final Order, June 22, 1993), aff'd, 642 So. 2d. 1367 (Fla. 1st DCA 1994).

107. Analysis, on the other hand, does not have to exist at the time of the adoption of a plan amendment. See Zemel, supra. Data that existed at the time of the adoption of a plan

amendment can be analyzed for the first time in preparation for the administrative hearing challenging a plan amendment.

108. Petitioners failed to prove that the amendments are not supported by appropriate data and analysis, that the data used was not the best available data, or that the data was not used appropriately.

109. Petitioners failed to prove that the amendments are inconsistent with any provision of the Strategic Regional Policy Plan.

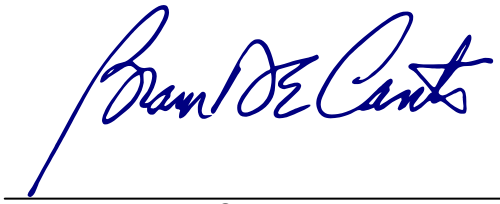
110. In summary, Petitioners failed to prove beyond fair debate that the amendments are not “in compliance,” as that term is defined in Section 163.3184(1)(b), Florida Statutes.

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 amendments adopted by Palm Beach County by Ordinances 2008-48, 2008-49, and 2008-50 are "in compliance."

DONE AND ENTERED this 21st day of October, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of October, 2009.

ENDNOTES

[1]/ Unless otherwise noted, all references to the Florida Statutes are to the 2008 codification.

[2]/ In some exhibits and testimony, this amendment is referred to as the Seminole/Southern Commercial amendment.

[3]/ In some exhibits and testimony, this amendment is referred to as the Coconut/Northlake Commercial amendment.

[4]/ In some exhibits and testimony, this amendment is referred to as the Lake Worth Commercial amendment.

[5]/ No party suggested that Mr. Wilson's participation in any way prejudiced the proceeding.

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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.