

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TIERRA VERDE COMMUNITY)
ASSOCIATION, INC., MAURA J.)
KIEFER, and MICHAEL MAURO,)
)
Petitioners,)
)
vs.) Case No. 09-3408GM
)
CITY OF ST. PETERSBURG,)
FLORIDA,)
)
Respondent.)
_____)

RECOMMENDED ORDER

The final hearing in this case was held on March 23 through 25, 2010, in St. Petersburg, Florida, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioners: Thomas W. Reese, Esquire
2951 61st Avenue South
St. Petersburg, Florida 33712-4539

John R. Thomas, Esquire
233 Third Street North, Suite 101
St. Petersburg, Florida 33701-3818

For Respondent: Jeanne Hoffmann, Esquire
Kimberly Jackson, Esquire
Post Office Box 2842
St. Petersburg, Florida 33731

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the City of St. Petersburg's amendment to its Comprehensive Plan, adopted by Ordinance No. 2009-689-L (Plan Amendment) is "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes (2009).^{1/}

PRELIMINARY STATEMENT

On May 21, 2009, the City of St. Petersburg (City) adopted the Plan Amendment, which amends the Future Land Use Map (FLUM) of the City's Comprehensive Plan to assign future land use designations to 18.25 acres that were annexed from Pinellas County into the City in 2008 (the subject properties). This proceeding is governed by the special procedures established in Section 163.32465, Florida Statutes, which provide for reduced state oversight of local comprehensive planning in urban areas. No Statement of Intent was issued by the Department of Community Affairs (Department) regarding the Plan Amendment. Petitioners filed their petition to challenge the Plan Amendment on June 22, 2009.

At the final hearing, Joint Exhibits 1 through 4 were admitted into evidence. Petitioners presented the testimony of Gordon Beardslee, Pinellas County General Planning Administrator; Paul Murray; Maura Kiefer; Michael Mauro; Marina Pennington; Sally Bishop, Director of Pinellas County Department

of Emergency Management; and George Deakin. Petitioners' Exhibits 21, 48, 50, 56, 59, 60, 61, 62, 72, 73, 82, 84 and 96 were admitted into evidence. The City presented the testimony of Richard MacAulay, Manager for the City's Planning and Economic Development Department; Thomas Whalen, Planner III for the City's Transportation and Parking Department; David Healey, Executive Director of the Pinellas Planning Council; and Dr. Bernard Piawah, Regional Planning Administrator for the Department. The City's Exhibit Nos. 3, 15, 16, 33, 34, 36, 55 and 62(f) were admitted into evidence.

The three-volume Transcript of the hearing was filed with DOAH. The parties filed proposed recommended orders that were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. The City is a Florida municipality and has adopted a comprehensive plan that it amends from time to time pursuant to Chapter 163, Part II, Florida Statutes.

2. Petitioner Mauro is a resident of the City. Petitioners Kiefer and Mauro operate businesses in the City. These individuals provided timely comments to the City on the Plan Amendment.

3. Petitioner Tierra Verde Community Association (TVCA) holds easements on the subject properties for access and maintenance of landscaping and lighting. On this basis, TVCA asserts that it owns property within the City.

4. The subject properties are within the boundaries of TVCA and subject to covenants and restrictions adopted by TVCA. The owners of the subject properties are obligated to pay assessments imposed by TVCA for the services and functions provided by TVCA. On this basis, TVCA claims to operate a business within the City.

5. TVCA made timely comments on the Plan Amendment.

The Plan Amendment and Subject Properties

6. The City followed the alternative state review process established in Section 163.32465, Florida Statutes. In accordance with Section 163.32465(4)(a), the City transmitted the Plan Amendment and appropriate supporting data and analysis to the Department, the County, Tampa Bay Regional Planning Council, and other appropriate agencies.

7. The Plan Amendment amends the FLUM to apply future land use designations to 18.25 acres on a barrier island in Boca Ciega Bay known as Tierra Verde.

8. Tierra Verde consists predominantly of single-family and multi-family residential developments. Most of the multi-family

developments, comprising condominiums and townhomes, are located along the North-South Pinellas Bayway, which is State Road 679.

9. The subject properties include 13 parcels with multiple owners. Madonna Boulevard bisects the subject properties. Existing development on the subject properties include the Tierra Verde Marina, the Tierra Verde Marina High and Dry (an upland boat storage facility), a yacht broker, a beauty parlor, a post office, a bait shop, a hardware store, a convenience store with gas dispensers, a dental office, a dry cleaner, a real estate office, a medical office, and a resort/timeshare building (no longer in use).

10. To the north of the subject properties are single-family residences and Boca Ciega Bay; to the south are multi-family residences; to the east are the Pinellas Bayway and multi-family residences; and to the west are single-family residences.

11. The subject properties were located in unincorporated Pinellas County until the City annexed the properties in November 2008. The properties remain subject to the Pinellas County Comprehensive Plan until the City amends its own Comprehensive Plan to include the properties. See § 171.062(2), Fla. Stat.

12. Currently, there are two Pinellas County land use designations on the subject properties: 17.28 acres are

designated Commercial General (CG) and five vacant lots on 0.97 acres are designated as Residential Low (RL).

13. The Plan Amendment would assign the same labels to the subject properties: CG for the 17.28 acres and RL for the five vacant lots. The City's RL designation is essentially the same as the County's RL designation, but the City's CG designation differs from the County's CG designation.

14. The City's CG designation allows a potential maximum of 414,000 square feet of commercial uses on the 17.28 acres designated CG.

15. The City's CG designation allows for 24 residential units per acre. The Plan Amendment would allow 415 new dwelling units on the CG lands. The City estimated that the 415 dwelling units would be occupied by 639 persons.

16. The City has a workforce housing ordinance that allows residential density to be increased another six units per acre for qualifying developments. If the potential maximum number of workforce housing units were added, 518 residential units could be developed on the lands designated CG.

17. The City CG designation allows for up to 40 rooms per acre of transient (hotel) units, for a total of 691 hotel units.

18. The Pinellas County Comprehensive Plan establishes special overlay policies and criteria for Tierra Verde. The Tierra Verde overlay requires development to be compatible with

existing structural bulk and height, requires commercial uses to serve the island's residents, and restricts single-family development to 35 feet in height and multi-family development to five stories.

19. The City does not propose to adopt an overlay or comparable policies and criteria as part of the Plan Amendment. The Tierra Verde Community Overlay policies and criteria would no longer apply to the subject properties.

Hurricane Evacuation and Shelter Capacity

20. Section 163.3178(2)(h), Florida Statutes, and Florida Administrative Code Rule 9J-5.012(2)(e) require each coastal management element to designate the coastal high-hazard area (CHHA). Section 163.3178(2)(h) defines the CHHA as "the area below the elevation of the category 1 storm surge line as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model."

21. The subject properties are not located in the CHHA.

22. Pinellas County uses a broader planning concept than the CHHA, called the Coastal Storm Area (CSA). The CSA encompasses all lands on barrier islands, all areas isolated by the CHHA, and all properties in a FEMA Velocity Zone.

23. The subject properties are currently within the County's CSA. However, the Plan Amendment would terminate the applicability of the CSA to the subject properties.

24. Petitioners characterize the CSA as the "best available data regarding coastal storm protection." Presumably, that characterization is intended to invoke the requirement of Florida Administrative Code Rule 9J-5.005(2)(c) that plan amendments must be based on the best available data. However, the CSA, to the extent that it is data, is only the best available data regarding the geographic area affected by coastal storms based on a methodology used by the Tampa Bay Regional Planning Council. In the same way, the CHHA is the best available data on the geographic area affected by coastal storms utilizing the SLOSH model. As stated in the Conclusions of Law, the choice between the two zones remains a matter of legislative policy.

25. The subject properties are located in a hurricane Evacuation Zone A. Therefore, the properties are also located in the "hurricane vulnerability zone," which is defined in Florida Administrative Code Rule 9J-5.003(57), as all lands that must be evacuated in the event of a 100-year storm or Category 3 hurricane (Evacuation Zones A, B, and C).

26. The only evacuation route for the residents of Tierra Verde is via a causeway and two-lane drawbridge to Isla del Sol. Residents evacuating Tierra Verde would have to cross two more bridges before reaching the mainland. Their out-of-county

evacuation route includes four areas that are within the CHHA and could be flooded in a Category 1 hurricane.

27. Low-lying barrier islands are difficult places to evacuate in the event of a coastal storm.

28. The City did not evaluate, in conjunction with the Plan Amendment, the effect that re-development of the 17.28 acres of CG lands for the maximum allowable residences or hotel units would have on hurricane evacuation and shelter capacity. The City asserts that, because the subject properties were not in the CHHA, such an evaluation was unnecessary.

29. Policy CM13.11 establishes a 16-hour out-of-county hurricane evacuation clearance time for a Category 5 storm event. Clearance time is the time required to clear the roadway of all vehicles evacuating in response to a hurricane.

30. Clearance times for Pinellas County do not meet the 16-hour out-of-county evacuation standard.

31. The Tampa Bay Region Hurricane Evacuation Study 2006 estimates that current clearance times in Pinellas County for a Category 5 storm are 23 to 28 hours for in-county to shelter evacuation and 46 to 55 hours for out-of-county evacuation.

32. The clearance times for the Tampa Bay area are the highest for any area of Florida and the coastal United States.

33. If the subject properties were developed with the maximum residential units or maximum hotel units allowed by the

Plan Amendment, it is likely that the evacuation clearance times would be increased (worsened).

34. The County reports that it currently has sufficient shelter capacity for evacuation levels A through C. However, this determination of sufficiency is based on an allowance of only 10 square feet per person in the shelters. Most local governments and emergency planners use the American Red Cross standard for shelter space of 20 square feet per person.

35. Even using 10 square feet per person, Pinellas County has a deficit of shelter space for Category 4 and 5 hurricanes. Using 20 square feet per person, Pinellas County has a deficit of shelter space for Category 2 and larger hurricanes.

36. The City points out that, because the subject properties are in Evacuation Zone A, residents and hotel residents on the subject properties would be the first ordered to evacuate during a hurricane. This fact does not change the likely adverse effect of the Plan Amendment on evacuation times and shelter capacity for City and County residents.

37. Although some recent post-hurricane studies found that fewer people use the emergency shelters than was predicted, emergency planners in the region believe that there is inadequate shelter capacity for large hurricanes.

Residential and Commercial Need

38. The City did not perform a population-based "needs analysis" for the Plan Amendment. The City stated that it does not use population projections to determine the need for residential density increases because the City is essentially "built out."

39. The City did not perform a commercial needs analysis for the 17.28 acres of CG created by the Plan Amendment, because the property is already designated and developed for commercial uses.

Roadway Capacity

40. A 2008 level of service (LOS) report for the Pinellas Bayway indicates that the LOS was "C" from Madonna Boulevard on Tierra Verde to the drawbridge and Isla del Sol. The adopted standard for this road segment is LOS "D." To degrade the LOS below the adopted standard would require the addition of 892 vehicle trips.

41. The maximum potential vehicle trips that would be generated from the subject properties would be from its development exclusively for commercial uses; 1,220 peak hour trips, or 1,397 trips if a commercial bonus is applied.^{3/} However, the City determined that development of the property was not likely to generate the maximum potential vehicle trips, but would, instead, generate approximately 800 trips.

42. The City used the 100th highest hour (k-100) of yearly traffic in estimating the impact of the potential traffic from the subject properties. Use of the k-100 peak hour analysis is part of the usual method for analyzing roadway level of service.

43. Petitioners contend that the City should have used the "design level" peak hour factor, which is the 30th highest hour (k-30). The k-30 peak hour was used by the Florida Department of Transportation (FDOT) in its recent study associated with the drawbridge. Using k-30, FDOT assigned an LOS of "F" for the intersection of Madonna Boulevard and the Pinellas Bayway and for the drawbridge.

44. Petitioners failed to prove that k-30 is the appropriate measure to evaluate the potential roadway impacts of the Plan Amendment, or that it is the "best available existing data" for analyzing the Plan Amendment.^{4/}

45. The concurrency management system for roadways requires land development to be "concurrent" with roadway capacity, and prohibits the issuance of building permits that would cause the adopted LOS standards on affected roadway segments to be violated. See § 163.3180(1)(c), Fla. Stat. Comprehensive plan amendments do not have to be "concurrent" with roadway capacity.

Internal Consistency

46. Petitioners claim that the Plan Amendment would make the FLUM inconsistent with a number of provisions of the City's Comprehensive Plan, identified below.

Policy LU2.4

47. Policy LU2.4 of the Future Land Use Element (FLUE) states that the City may permit higher intensity uses outside of "activity centers" only where available infrastructure exists and surrounding uses are compatible. The City's Comprehensive Plan designates four "activity Centers" in the City. The subject properties are not within an activity center.

48. What "higher intensity uses" means in this context was not explained by the parties, but there did not appear to be a dispute that the Plan Amendment would create "higher intensity uses."

49. The preponderance of the record evidence shows that City utilities and other public services are adequate to serve the subject properties. Petitioners' arguments regarding the current absence of public transit service to Tierra Verde does not represent a deficiency, because there are currently no City residents on Tierra Verde.

50. The term "compatibility" is defined in the General Introduction to the City's Comprehensive Plan to have the following meaning:

Not having significant adverse impact. With limited variation from adjacent uses in net density, in type of use of structures (unless highly complimentary) and with limited variation in visual impact on adjacent land uses. In the instance of certain adjacent or proximate uses, compatibility may be achieved through the use of mitigative measures.

51. The term "compatibility" is also defined in Florida Administrative Code Rule 9J-5.003(23):

"Compatibility" means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

52. Petitioners contend that the "surrounding uses" on Tierra Verde are not compatible with the uses allowed under the Plan Amendment. The City responds that compatibility cannot be determined until a future development proposal is submitted for the subject properties.

53. A compatibility analysis is required for this "in compliance" determination for the Plan Amendment. Although a compatibility analysis for a comprehensive plan amendment is a more "macro" or general evaluation than at the time of a specific development application, the issue is not one that can be put off until the City reviews a development proposal for the subject properties.

54. Using the City's own definition of compatibility as "limited variation" from adjacent uses in net density and type use, it is found that, if the subject properties were developed to attain the maximum residential units or maximum hotel units, it would not be a "limited variation" from adjacent densities and use types. Therefore, these scenarios allowed by the Plan Amendment are not compatible with adjacent land uses. To find otherwise would render the term "limited variation" in the City's definition of compatibility meaningless.

55. A mix of general commercial uses has existed for years on the subject properties and Petitioners failed to prove that the commercial uses allowed by the Plan Amendment are incompatible with surrounding uses.

Policy LU3.8

56. Policy LU3.8 requires that the City to protect existing and future residential uses from incompatible uses, noise, traffic and other intrusions that detract from the long term desirability of an area "through appropriate land development regulations."

57. Petitioners presented no evidence to show that the City has failed to adopt land development regulations to address potential incompatible uses, noise, traffic and other intrusions.

Policy LU3.11

58. FLUE Policy LU3.11 requires that residential uses greater than 7.5 units per acre be located along designated major transportation corridors and in close proximity to activity centers where compatible.

59. The City's Comprehensive Plan does not define "major transportation corridors," but it defines "Major Street" to include minor arterials. The Pinellas Bayway (SR 679) is designated a minor arterial. The City contends that the Pinellas Bayway on Tierra Verde qualifies as a major transportation corridor.

60. However, it was not disputed that the subject properties are not "in close proximity" to one of the four activity centers in the City. The City did not explain how the Plan Amendment is consistent with Policy LU3.11, except to state that the City could possibly designate the subject properties as a new activity center in the future.

Policy LU3.17

61. Policy LU3.17 states that the City has an adequate supply of commercial land to meet existing and future needs and provides that future expansion of commercial uses shall be restricted to infilling into existing commercial areas and activity centers except where a need can be clearly identified.

62. Petitioners point out that the Plan Amendment would represent an increase in the allowable commercial intensity, compared to the Pinellas County Comprehensive Plan, but that fact is not relevant to whether the Plan Amendment is consistent with other provisions of the City's Comprehensive Plan.

63. Petitioners' arguments that the City did not demonstrate the need for commercial uses on the 17.28 acres designated CG by the Plan Amendment fail, because the properties are already designated and developed for commercial uses, and any expansion of the existing commercial square footage on the subject properties would qualify as infilling an existing commercial area.

Objective LU4

64. FLUE Objective LU4 is to provide the land to accommodate the various development types necessary to support future growth. Objective LU4 includes statements that no additional "residential acreages" are needed to accommodate forecasted future populations and no additional commercial acreage is required to serve the City's future needs.

65. The Plan Amendments would add 17.28 acres of potential residential development. Objective LU4 states that there is no need for this additional residential acreage.

66. The City asserts that it has no other future land use categories that would be more appropriate for the 17.28 acres

than CG. The City asserts, in essence, that it has no choice but to allow for the potential addition of hundreds of new residents or over a thousand new hotel units.

67. It is not unreasonable for the City to assign a commercial designation to annexed lands which are already developed for general commercial uses. When Objective LU4 is read together with Policy LU3.17, which allows for commercial infill, an inconsistency with the Plan Amendment with regard to commercial uses is not apparent.

68. FLUE Objective LU4 also states that mixed-use developments are encouraged in appropriate locations to foster a land use pattern that results in "fewer and shorter automobile trips and vibrant walkable communities." The CG designation would allow for a wide mix of uses. Petitioners did not show that the subject properties could not be developed in a manner that fosters fewer and shorter automobile trips and a walkable community.

Objective LU12

69. Objective LU12 states that the City shall "strive to maintain and enhance the vitality of neighborhoods through programs and projects developed and implemented in partnership with CONA, FICO and neighborhood associations."

70. No evidence was presented by Petitioners to show that there are existing programs or projects developed by the City

and TVCA with which the Plan Amendment is inconsistent, or that the Plan Amendment would prevent future programs and projects.

Objective CM13

71. Objective CM13 requires the City to cooperate with state, regional and county agencies to maintain or reduce hurricane evacuation times.

72. The effect of the Plan Amendment on hurricane evacuation times was not evaluated before the adoption of the Plan Amendment. The City did not engage in meaningful cooperation with state, regional and county agencies to maintain or reduce hurricane evacuation times. If the subject properties were developed at the maximum potential residential density or maximum potential hotel density allowed by the Plan Amendment, hurricane evacuation times would likely increase.

73. The Tampa Bay Regional Planning Council commented that public shelter capacity and evacuation clearance times should have been addressed in conjunction with the Plan Amendment.^{2/} Pinellas County objected to the Plan Amendment, based on its belief that the Plan Amendment would increase hurricane evacuation times and that there is insufficient shelter capacity. FDOT commented on the Plan Amendment, stating that the addition of permanent residents was "ill-advised" based on the vulnerability of the subject properties to storm surge.

74. The City states that it will consider hurricane evacuation times during the review of development site plans. While consideration of hurricane evacuation issues is appropriate at the site plan review stage, the City must also consider hurricane evacuation issues when it adopts a plan amendment that affects land within the hurricane vulnerability zone.

Policy CM13.11

75. Policy CM13.11 establishes a 16-hour out-of-county hurricane evacuation clearance time for a Category 5 storm event. The City does not meet its 16-hour standard, but contends that, because the subject properties are not in the CHHA, the 16-hour evacuation time does not apply.

76. Clearance times are not defined by, or solely affected by, the number of persons that reside in the CHHA. Clearance times are based on the number of persons evacuating and certainly include the first people to be evacuated -- the people in Evacuation Zone A. The subject properties are within Evacuation Zone A. Similarly, emergency shelter capacity is not based solely on the number of persons evacuating from the CHHA.

Objective T12

77. Objective T12 of the Transportation Element states that the City shall provide equitable transportation service to all residents and accommodate special transportation needs.

Petitioners claim that the Plan Amendment is inconsistent with this objective because there is no existing transportation service to the subject properties. As stated above, the lack of existing service is not a deficiency because there are no City residents on Tierra Verde.

CONCLUSIONS OF LAW

78. To have standing to contest a comprehensive plan amendment, a person must be an "affected person," which is defined in Section 163.3184(1)(a), Florida Statutes, as a person owning property, residing, or owning or operating a business within the boundaries of the local government, and who made timely comments to the local government regarding the plan amendment.

79. Petitioners Mauro and Kiefer are affected persons.

80. TVCA's easements over the subject properties do not establish its standing as an owner of land within the City. Although an easement is an interest in real property, an easement is not an estate in land. It is an incorporeal, non-possessory interest in the use of someone else's land for a described purpose. See Sears, Roebuck and Co. v. Franchise Finance Corporation of America, 711 So. 2d 1189, 1191 (Fla. 2d DCA 1998). An easement is usually said to be "held," rather than "owned."

81. There are no reported cases that have dealt with this particular question, but it is concluded that TVCA, as an easement holder, is not a property owner within the meaning of Section 163.3184(1)(a), Florida Statutes.

82. The Administration Commission liberally interprets "operating a business" for the purpose of standing as an affected person. See Dept. of Comm. Affairs v. Miami-Dade County, AC Case No. ACC-09-003 (Final Order July 30, 2009) (1000 Friends' activities in Miami-Dade County to promote growth management, affordable housing, and Everglades restoration were sufficient to establish that 1000 Friends operates a business). Therefore, it is concluded that TVCA's powers and responsibilities with respect to the easements, and their imposition and collection of assessments on the subject properties, are sufficient to establish that TVCA operates a business within the City and, therefore, that TVCA is an affected person.

83. The City's determination that the Plan Amendment is "in compliance" is presumed to be correct and shall be sustained unless Petitioners have shown by a preponderance of the evidence that the Plan Amendment is not in compliance. See § 163.32465(5)(d), Fla. Stat.

84. Section 163.3184(1)(b), Florida Statutes, defines the term "in compliance:"

"In compliance" means consistent with the requirements of §§ 163.3177, 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.

85. Petitioners' comparisons of the Plan Amendment to existing Pinellas County Comprehensive Plan provisions are misplaced because the question of whether the Plan Amendment is in compliance is not answered by determining whether the Plan Amendment enlarges or reduces the uses that are currently allowed by the County on the subject properties. The Plan Amendment must be judged on its own terms to determine whether it is in compliance. On the other hand, the existing land uses on the subject properties are relevant to this compliance determination.

86. Florida Administrative Code Rule 9J-5.005(2) requires that a comprehensive plan amendment be supported by the best available existing data and that the amendment react to the data in an appropriate way and to the extent necessary.

87. Petitioners refer to the CSA as the "best available data regarding protection of the coastal population." However, the labeling of the CSA as "data" does not change the fact that

the City has legislative discretion in its choice of planning methods to protect its citizens against coastal storms.

Furthermore, designation and use of the CHHA is required by Section 163.3178, Florida Statutes; use of the CSA is not.

88. Florida Administrative Code Rule 9J-5.012 requires that coastal communities consider the hurricane vulnerability zone, persons requiring evacuation, shelter capacity, and evacuation times. Furthermore, the City's own Coastal Management Element recognizes that "population growth in the hurricane vulnerable areas may result in longer evacuation times and an increased need for shelter space."

89. The location of the subject properties outside of the CHHA does not mean that the City does not have to consider the effect of the Plan Amendment on hurricane evacuation and shelter issues. Evacuation and shelter issues reasonably apply to all lands within the "hurricane vulnerability zone."

90. The City contends that it has no control over shelter capacity or the roadways that form the hurricane evacuation route for the residents of Tierra Verde. The City's lack of control over these factors does not eliminate the City's duty to react appropriately to the existing circumstances that affect the safety and welfare of its citizens.

91. Petitioners proved by a preponderance of the evidence that, in adopting the Plan Amendment, the City did not react

appropriately to the best available existing data regarding the vulnerability of its citizens to hurricanes and the potential adverse effects of the Plan Amendment on hurricane clearance times and shelter capacity. Therefore the Plan Amendment is inconsistent with Florida Administrative Code 9J-5.005(2).

92. The best existing available data and the more persuasive evidence in the record support Petitioners' claim that it is not sound planning to allow over 600 new residents or over a thousand new transient (hotel) residents on Tierra Verde.

93. The elements of a comprehensive plan must be coordinated and consistent. § 163.3177(2), Fla. Stat. An amendment to a FLUM must be consistent with the other elements of the comprehensive plan. See Coastal Development of North Florida v. City of Jacksonville, 788 So. 2d 204, 208 (Fla. 2001).

94. Petitioners proved by a preponderance of the evidence that the Plan Amendment causes the City's Comprehensive Plan to be internally inconsistent. The Plan Amendment was shown to be inconsistent with:

(1) FLUE Policy LU2.4, because the Plan Amendment allows for higher intensity uses outside an activity center that would be incompatible with surrounding uses;

(2) FLUE Policy LU3.11, because the Plan Amendment allows for high residential densities that are not in close proximity to an activity center;

(3) Objective CM13 of the Coastal Management Element because the City did not cooperate with state, regional, and county agencies to maintain or reduce hurricane evacuation times; and

(4) Policy CM13.11 of the Coastal Management Element because the Plan Amendment would adversely effect evacuation times.

95. Petitioners failed to prove that the City did not conduct an appropriate analysis of need for the Plan Amendment. The lack of need for additional residential and commercial uses in the City is stated in the Comprehensive Plan itself. In addition, with respect to commercial uses, the City is not required to show a need for general commercial uses of the 17.28 acres because the property is already developed for general commercial uses. The City failed to react appropriately to the data that showed that there was no need for additional residential uses.

96. The City stated that the CG designation is the most appropriate designation for land that is already developed with general commercial uses, and that its has no better future land use designation to assign to the subject properties. However,

the City is not without the a means to deal with situations where one or more aspects of a future land use designation would be problematic. It is a common technique in comprehensive planning to place restrictions of FLUM amendments so that particular land uses, densities, or intensities that would otherwise be allowed under a future land use designation, are prohibited or restricted on the affected lands. See, e.g., Patricia Curry v. Palm Beach County, DOAH Case No. 09-1204GM, Final Order DCA09-GM-371 (November 24, 2009); Leseman Family Land Partnership v. Clay County, DOAH Case No. 07-5775GM, Final Order No. DCA08-GM-320 (October 17, 2008); Dept. of Comm. Affairs v. St. Joe Co., DOAH Case No. 06-0881GM, Final Order No. DCA07-GM-040 (April 3, 2007).

96. In summary, Petitioners proved by a preponderance of the evidence that the Plan Amendment is not "in compliance."

RECOMMENDATION

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

RECOMMENDED that the Administration Commission enter a final order determining that the City of St. Petersburg plan amendment adopted by Ordinance No. 2009-689-L is not "in compliance."

DONE AND ENTERED this 30th day of June, 2010, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of July, 2010.

ENDNOTES

- 1/ All references to the Florida Statutes are to the 2009 codification.
- 2/ The Council nevertheless found the Plan Amendment to be consistent with the Strategic Regional Policy Plan and recommended approval of the Plan Amendment.
- 3/ The number of vehicle trips generated by the existing commercial activities is not in the record.
- 4/ No evidence was presented to show that peak hours from normal traffic patterns (whether K-30 or k-100) are used to predict the traffic that can be expected during a hurricane evacuation.

COPIES FURNISHED:

Thomas W. Reese, Esquire
2951 61st Avenue South
St. Petersburg, Florida 33712-4539

John R. Thomas, Esquire
Thomas & Associates, P.A.
233 Third Street North, Suite 101
St. Petersburg, Florida 33701-3818

Shaw P. Stiller, General Counsel
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399

Jeanne Elizabeth Hoffmann, Esquire
City of St. Petersburg
Legal Department
Post Office Box 2842
St. Petersburg, Florida 33731

Kimberly G. Jackson, Esquire
Post Office Box 2842
St. Petersburg, Florida 33731

Barbara Leighty, Clerk
Transportation and Economic
Development Policy Unit
The Capitol, Room 1801
Tallahassee, Florida 32399-0001

Robert Wheeler, General Counsel
Office of the Governor
The Capitol, Suite 209
Tallahassee, Florida 32399-0001

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.