

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RONALD J. FAGAN, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 09-3487GM  
 )  
 CITRUS COUNTY, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 KATHERINE'S BAY, LLC, )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, Donald R. Alexander, on August 28, 2009, in Inverness, Florida.

APPEARANCES

For Petitioner: Denise A. Lyn, Esquire  
Denise A. Lyn, P.A.  
307 North Apopka Avenue  
Inverness, Florida 34450-4201

For Respondent: Peter Aare, Esquire  
Assistant County Attorney  
110 North Apopka Avenue  
Inverness, Florida 34450-4231

For Intervenor: Clark A. Stillwell, Esquire  
Law Office of Clark A. Stillwell, LLC  
Post Office Box 250  
Inverness, Florida 34451-0250

STATEMENT OF THE ISSUE

The issue is whether Citrus County's (County's) small-scale development amendment CPA-09-16 adopted by Ordinance No. 2009-A07 on May 26, 2009, is in compliance.

PRELIMINARY STATEMENT

On May 26, 2009, the County adopted small-scale development amendment CPA-09-16, which changed the future land use designation for a 9.9-acre parcel on the County's Generalized Future Land Use Map (GFLUM) from Low Intensity Coastal and Lakes District (CL) to Recreational Vehicle Park District (RVP). The parcel is owned by Intervenor, Katherine's Bay, LLC (Katherine's Bay or Intervenor).

On June 24, 2009, Petitioner, Ronald J. Fagan, a dentist who resides near the subject property, filed with the Division of Administrative Hearings (DOAH) a Petition and Request for Hearing (Petition) under Section 163.3187(3)(a), Florida Statutes (2008).<sup>1</sup> The Petition generally contended that the amendment was not in compliance with the County's Comprehensive Plan (Plan) because it was internally inconsistent with other Plan provisions. On July 16, 2009, Katherine's Bay was authorized to intervene in this proceeding.

By Notice of Hearing dated July 9, 2009, a final hearing was scheduled on August 28, 2009, in Inverness, Florida. On August 24, 2009, the case was transferred from Administrative Law Judge J. Lawrence Johnston to the undersigned.

On August 18, 2009, the parties filed a Joint Prehearing Stipulation. At the final hearing, Petitioner testified on his own behalf and presented the testimony of Dr. Timothy C. Pitts, Operations Manager for the County's GIS section and former County Senior Planner, and Glen Black, who resides near the subject property. Also, he offered Petitioner's Exhibits 2 and 4 through 8, which were received in evidence. The County presented no witnesses, but offered County Exhibit 3, which was received in evidence. Intervenor presented the testimony of Jeffrey Grybek, who owns a fishing camp near the subject property; Susan Farnsworth, County Environmental Planner and accepted as an expert; and Jerry W. Peebles, who owns the subject property. Also, it offered Intervenor's Exhibits 1-4 and 6-8, which were received in evidence.

A Transcript of the hearing (two volumes) was filed on September 11, 2009. By agreement of the parties, proposed recommended orders were due no later than October 2, 2009. They were timely filed by Petitioner and Intervenor and have been considered in the preparation of this Recommended Order. The County did not submit a proposed recommended order.

## FINDINGS OF FACT

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

### A. Background

1. Petitioner resides and owns property at 10662 West Halls River Road, Homasassa, Florida, in the southwestern part of the County. According to a County aerial map, the property appears to be 0.68 acres in size and is rectangular-shaped, with the eastern side fronting on the Homasassa River (River), while the western side adjoins West Halls River Road (also known as County Road 490A), a two-lane designated collector roadway for the County. See Intervenor's Exhibit 8. That road dead-ends a mile or so farther to the southwest in a subdivision known as Riverhaven. Petitioner has owned the property since April 1992.

2. Intervenor, a limited liability corporation, acquired ownership of a 47.5-acre parcel in May 2007, which lies directly west-northwest of Petitioner's property and across West Halls River Road. In early 2009, it filed an application with the County seeking a change in the land use on 9.9 acres of the larger parcel from CL to RVP. The smaller parcel's address is 10565 West Halls River Road and is a short distance north of Petitioner's lot. The change in land use was requested because Intervenor intends to place a recreational vehicle (RV) park on the 9.9-acre parcel.

3. On page 10-103 of the Plan's Future Land Use Element (FLUE), the CL land use is described in relevant part as follows:

This land use category designates those areas having environmental characteristics that are sensitive to development and therefore should be protected. Residential development in this district is limited to a maximum of one dwelling unit per 20 acres and one unit per 40 acres in the Federal Emergency Management Agency's V-zone.

4. On page 10-112 of the FLUE, the RVP land use is described in relevant part as follows:

This category is intended to recognize existing Recreational Vehicle (RV) Parks and Campgrounds, as well as to provide for the location and development of new parks for recreational vehicles. Such parks are intended specifically to allow for temporary living accommodation for recreation, camping, or travel use.

5. After the application was filed and reviewed by the County staff, a report was prepared by the then County Senior Planner, Dr. Pitts, on April 14, 2009, recommending that the application be approved. See Petitioner's Exhibit 5. The report noted that "this site is appropriate for some type of RV Park development subject to an appropriately designed master plan." Id. Although forty-nine RV units could potentially be placed on the parcel, the report noted that due to significant "environmental limitations of the area," the site "may not be able to be designed at maximum intensity for this land use

district." Id. The "environmental limitations" are approximately 1.64 acres of wetlands that are located on four parts of the property, wetlands on neighboring properties, and "karst sensitivity." The report noted that these environmental issues would have to be addressed in a master plan to be submitted by the applicant before development. The matter was then favorably considered by the County's Planning and Development Review Board by a 4-1 vote on May 7, 2009.

6. On May 26, 2009, the Board of County Commissioners (Board) conducted a public hearing on the application. By a 3-2 vote, the Board adopted Ordinance 2009-A07, which approved the change on the GFLUM. See Petitioner's Exhibit 2. Petitioner and Intervenor appeared at the hearing and submitted comments regarding the amendment. See County Exhibit 3. Accordingly, both are affected persons and have standing to participate in this matter. Because the size of the parcel was less than ten acres, the map change was not reviewed by the Department of Community Affairs. See § 163.3187(1)(c)1. and (3)(a), Fla. Stat.

7. On June 24, 2009, Petitioner filed with DOAH his Petition challenging the small-scale development amendment. As summarized in the parties' Joint Prehearing Stipulation, Petitioner contends that the map change "is not consistent with [the County's] adopted comprehensive plan because such is

incompatible with the character of the properties surrounding the subject property and because such is incompatible with [the] environmentally sensitive nature of the subject property and the properties surrounding the subject property." See Joint Prehearing Stipulation, pages 1-2. More specifically, Petitioner contends the map change is internally inconsistent with FLUE Policies 17.2.7, 17.2.11, and 17.2.8.

B. The Subject Property

8. Although its precise dimensions are not of record, from around 1952 until 1985, a golf course was located on a large tract of land west of West Halls River Road, where Intervenor's larger parcel of property is located. Currently, the larger parcel is vacant and undeveloped. The subject property (as well as the entire larger parcel) is classified as CL (Low Intensity Coastal and Lakes), which allows one dwelling unit per twenty acres. Because the property is in the coastal high hazard area (CHHA), the amendment allows five RV units per acre, or a total of forty-nine. In all likelihood, however, the number would be somewhat smaller due to "severe" environmental constraints discussed above. See Finding 5, supra. The new land use also allows a small amount of retail development to serve the RV customers.

9. The 9.9-acre parcel surrounds a one-acre parcel that adjoins West Halls River Road, also owned by Intervenor, and

carries a CLC (Coastal and Lakes Commercial) land use designation. A vested eighteen-unit RV park (Sunrise RV Park) has been located on the one-acre parcel since the late 1980s. Except for the small one-acre enclave, the property is bordered on three sides by vacant, unimproved property, all designated as CL. According to Petitioner, Sunrise RV Park has a small number of "dilapidated" trailers and "a bunch of junk stored on the front lawn." This was not disputed. The vacant lot directly south of the larger parcel, comprised mainly of wetlands, is owned by Glen Black, who objects to the map change. Across the roadway, the area north and south of Petitioner's property along the River is classified as CL and is "predominately residential."

10. Besides the residential uses on the River side of the road, Intervenor identified around six non-conforming businesses (mainly former fish camps) that were vested prior to the adoption of the current Plan and that are interspersed with the residential lots. (Under current Plan provisions, they would not be allowed.) Around one-quarter mile or so south of the subject property is the Magic Manatee Marina (Marina) located on a two-acre parcel facing the River.<sup>2</sup> A small fish camp with six "rental cottages" lies a few lots north of the Marina. There are also four small condominium buildings with dock facilities (known as Cory's Landing) just north of the fish camp. The



aerial map reflects that all other lots south of Petitioner's property are used for residential purposes.

11. Besides the other residential lots north of Petitioner's property, there are nine rental units at a vested "fishing resort" on a parcel slightly less than two acres in size located at 10606 West Halls River Road. Around one-half mile further north at the confluence of the Halls and Homasassa Rivers is a vested restaurant, Margarita Grill. Except for these vested non-conforming uses, all other lots are used for residential purposes, and the entire strip of land adjoining the River is classified as CL.

12. North of Intervenor's 47.5-acre parcel, but not directly adjoining it, and on the western side of West Halls River Road, is a large unevenly-shaped tract of land classified as RVP, on which the Nature's Resort RV Park is located. That facility is authorized to accommodate around three hundred RVs. The entrance to that park from West Halls River Road appears to be at least one-quarter mile or more north of the subject property.

#### C. Petitioner's Objections

13. Petitioner contends that the amendment is not in compliance because it is internally inconsistent with FLUE Policies 17.2.7, 17.2.11, and 17.2.8, which concern

environmental and compatibility requirements. These provisions are discussed separately below.

a. Policy 17.2.7

14. Policy 17.2.7 provides as follows:

The County shall guide future development to the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations and the availability of necessary services.

15. Petitioner argues that the subject property is in an extremely sensitive environmental area due to extensive wetlands and a karst sensitive landscape. (Karst is a limestone underground rock structure that is very porous and through which pollutants can easily travel.) He further points out that the property is located within the CHHA. Given these environmental constraints, and the proposed increase in density, Petitioner contends the map change will run counter to the above policy.

16. There are no provisions within the Plan that prohibit the location of an RV park within the CHHA. Policy 17.6.12 imposes numerous requirements for RV parks, including a thirty percent open space requirement, restrictions on densities, wetland protection, upland preservation, clustering, and connection to regional central water and sewer service. These policy restrictions have been implemented by more specific land development regulations (LDRs) that limit the density and intensity of RVs and the types of RVs (e.g., park models) that

can be placed in an RV park located within a CHHA. In this case, because the property is in a CHHA, the LDRs impose a five-RV per acre limitation, as opposed to the normal fourteen RVs per acre in non-CHHA areas, and for evacuation purposes, park models are prohibited. Further, the RV park must be served by regional central water and sewer services.

17. All land in the County west of U.S. Highway 19, including the subject property, is karst sensitive. As such, any development west of U.S. Highway 19 must meet certain design standards to ensure that the water supply is not threatened. The County says that these concerns must be addressed during the site approval (development) process.

18. The record shows that there are four jurisdictional wetland sites on the parcel totaling 1.64 acres. There are also wetlands on the surrounding property. Because of these environmental constraints, Dr. Pitts (the former County Senior Planner) stated that it is "highly unlikely" that Intervenor "can develop at 49 units." He further pointed out that while it is "certainly possible to do it at a smaller number," there would be one hundred percent wetland protection through setbacks both to wetlands on the subject parcel, as well as the surrounding area, a thirty percent open space requirement on the site, a ten percent area dedicated to recreational uses, and minimum buffers on the side of the property facing West Halls

River Road. For RV parks, pertinent LDRs adopted to implement the Plan require that the developer avoid all wetlands.

19. Policy 17.2.7 expresses a County planning decision that future development be directed to "the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations." (Emphasis added) According to Dr. Pitts, the subject property has "severe" environmental limitations, and that "it will be difficult to design the site [in a way] that meets the standards of the comprehensive plan and the land development code." Notwithstanding the other provisions within the Plan and LDRs that place limitations on RV park development in an effort to satisfy environmental constraints, see Finding 18, supra, the subject property is clearly not "the most appropriate area, as depicted on the GFLUM" for new development, nor is it an area "with minimal environmental limitations." In fact, the amendment does just the opposite -- it directs new commercial development to an area with severe environmental limitations. Therefore, the greater weight of evidence supports a finding that the map change is internally inconsistent with Policy 17.2.7.

b. Policy 17.2.11

20. Petitioner next contends that the plan amendment is contrary to the Plan's basic strategy of protecting

environmentally sensitive areas, as set forth in FLUE Policy 17.2.11, which reads as follows:

Consistent with the Plan's basic strategy for protection of environmentally sensitive areas, the following guidelines shall apply to all development in the Coastal, Lakes, and Rivers Region:

No increase in residential density should be approved except for Planned Development standards already contained in the Plan.

No additional high intensity non-residential land uses shall be approved for this region. Specifically new GNC [General Commercial] and IND [Industrial] districts shall be avoided.

21. The subject property is within the Coastal Region and therefore subject to these guidelines. See Intervenor's Exhibit 3, page 10-3. On page 10-150 of the FLUE, the narrative text states in part that "with increasing development activity and growth in the coming years, existing restrictions on the density/intensity of land use should be maintained and enhanced to provide additional protection to this sensitive region."

22. According to the Plan, a "GNC district allows potentially high density/intensity development" and "should not be located in areas of the County deemed to be environmentally sensitive areas." See Intervenor's Exhibit 3, page 10-110. It further provides that "[n]o new GNC shall be allowed in the coastal, lakes and river region." Id. Therefore, new GNC development should not be allowed in the Coastal Region.

Although an RV park is a commercial use, it is not a GNC use. Further, the five-units per acre limitation is not considered a high-intensity non-residential use. Therefore, while the policy serves a laudable purpose, it does not prohibit RVP development within the Coastal Region. Therefore, the map change is not internally inconsistent with Policy 17.2.11.

c. Policy 17.2.8

23. Petitioner's final objection is that an RV park is not compatible with the surrounding area. He goes on to contend that by placing an RVP designation adjacent to a large tract of CL land, the County has contravened FLUE Policy 17.2.8. That policy reads as follows:

The County shall utilize land use techniques and development standards to achieve a functional and compatible land use framework which reduces incompatible land uses.

24. Because compatibility is not defined in the Plan, Florida Administrative Code Rule 9J-5.003(23) is helpful in resolving this issue.<sup>3</sup> That rule defines the term

"compatibility" as follows:

(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.

25. In its Proposed Recommended Order, Intervenor also suggests that the definition of "suitability" is relevant to this issue. That term is defined in Rule 9J-5.003(128) as follows:

(128) "Suitability" means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development.

26. Petitioner characterized the area around his home as quiet, peaceful, and "all residential." He noted that except for a few vested, non-conforming businesses, such as the Sunrise RV Park, Marina, fish camp, and restaurant, the remainder of the area along the River, as well as Intervenor's larger parcel across the street, is either residential or vacant. Petitioner fears that an RV park will result in increased noise, park lighting during nighttime hours, trash being left by the roadside, more traffic on the two-lane road, and a decrease in the value of his property. He also believes that the developer intends to place the southern entrance to the RV park almost directly across the street from his home.

27. The greater weight of evidence supports a finding that the proposed new land use designation is not compatible with the surrounding land. Intervenor argues that an RV park and the surrounding residential properties are compatible (and suitable) because there are already non-conforming uses along the River

that have not unduly negatively impacted the area. These uses, however, number only six along that stretch of the River, and they have existed for decades due to vested rights. It is fair to infer that the insertion of an RV park in the middle of a large tract of vacant CL land would logically lead to further requests for reclassifying CL land to expand the new RV park or to allow other non-residential uses.

28. The stated purpose of Policy 17.2.8 is to reduce "incompatible land uses." At the same time, Rule 9J-5.003(23) discourages land uses which are in relative proximity to each other and can unduly negatively impact the other uses or conditions. The commercial RV park, with a yet-to-be determined number of spaces for temporary RVs, tenants, and associated commercial development, will be in close proximity to a predominately residential neighborhood. A reasonable inference from the evidence is that these commercial uses will have a direct or indirect negative impact on the nearby residential properties and should not coexist in close proximity to one another. This is contrary to Policy 17.2.8, which encourages a reduction in "incompatible land uses," and the amendment is therefore internally inconsistent with the policy.

#### CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto



pursuant to Sections 120.569, 120.57(1), and 163.3187(3), Florida Statutes.

30. Section 163.3187(3)(a), Florida Statutes, provides in relevant part that "[a]ny affected person may file a petition with [DOAH] pursuant to ss. 120.569 and 120.57 to request a hearing to challenge the compliance of a small scale development amendment . . . ." The statute further provides that "the parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor." The parties have stipulated to facts establishing that Petitioner and Intervenor are affected persons within the meaning of the law.

31. Under Section 163.3187(3)(a), Florida Statutes, the County's determination that the small-scale amendment is in compliance is presumed to be correct. Further, this determination will be sustained unless "it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this act." Therefore, the test is whether the evidence supports or contradicts the determination of the County. See, e.g., Cochran v. City of Crestview, et al., DOAH Case No. 08-0208GM, 2008 Fla. ENV LEXIS 75 at \*38 (DOAH April 21, 2008, Admin. Comm. July 30, 2008). This burden of proof has been applied in this proceeding.

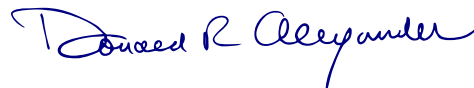
32. For the reasons given in the Findings of Fact, the preponderance of the evidence supports a conclusion that the plan amendment is internally inconsistent with FLUE Policies 17.2.7 and 17.2.8 and is therefore not in compliance. Accordingly, in these two respects, it is concluded that Petitioner has met his burden of showing that the amendment is not in compliance with the requirements of Chapter 163, Florida Statutes, and that the determination of the County is incorrect.

RECOMMENDATION

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

RECOMMENDED that the Administration Commission enter a final order determining that small-scale development amendment CPA-09-16 adopted by the County by Ordinance No. 2009-A07 on May 26, 2009, is not in compliance.

DONE AND ENTERED this 9th day of October, 2009, in Tallahassee, Leon County, Florida.



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DONALD R. ALEXANDER  
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 9th day of October, 2009.

ENDNOTES

1/ All statutory references are to the 2008 version of the Florida Statutes.

2/ At hearing, Petitioner and Intervenor offered conflicting testimony regarding the distances between the subject property, Petitioner's property, and the non-conforming uses. For example, while acknowledging that he wasn't sure, Petitioner believed that the Marina "might be a mile and a half down the road." (Vol. II, Tr. at 8). On the other hand, Mr. Gryback, who owns a "fishing resort" north of Petitioner's lot estimated the distance from his property to the Marina to be no more than one-quarter mile. (Vol. II, Tr. at 32.) The latter distance appears to more closely comport with the County's aerial map of the area.

3/ All rule references are to the current version of the Florida Administrative Code.

COPIES FURNISHED:

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

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

Shaw P. Stiller, General Counsel  
Department of Community Affairs  
2555 Shumard Oak Boulevard, Suite 325  
Tallahassee, Florida 32399-2100

Denise A. Lyn, Esquire  
Denise A. Lyn, P.A.  
307 North Apopka Avenue  
Inverness, Florida 34450-4201

Peter Aare, Esquire  
Assistant County Attorney  
110 North Apopka Avenue  
Inverness, Florida 34450-4231

Clark A. Stillwell, Esquire  
Law Office of Clark Stillwell, LLC  
Post Office Box 250  
Inverness, Florida 34451-0250

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.