STATE OF FLORIDA
ADMINISTRATION COMMISSION

FLAGLER RETAIL ASSOCIATES, LTD.;
FLAGLER S.C., LLC; and SC MOTA
ASSOCIATES, LTD.,

Petitioners,

v.

AC Case No. ACC-10-006
DOAH Case No. 09-4713GM

DEPARTMENT OF COMMUNITY AFFAIRS
and MIAMI-DADE COUNTY,

Respondents,

and

BLUE LAKE DEVELOPMENT CORPORATION,

Intervenor.
_____/

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Administration Commission ("Commission") on March 9, 2011, on the Determination of Non-Compliance issued by the Secretary of the Department of Community Affairs ("Department"). Following the receipt of the Corrected Recommended Order entered pursuant to section 163.3184(9), Florida Statutes, in Division of Administrative Hearings ("DOAH") Case No. 09-4713GM, the Department determined that the comprehensive plan amendment adopted by Miami-Dade County ("County") Ordinance 09-28 ("Amendment") is not "in compliance" as defined by section 163.3184(1)(b), Florida Statutes. The Commission is authorized to take final agency action and determine whether the Amendment is "in compliance," and, if the Amendment is found not "in compliance," to specify remedial actions that would bring the Amendment into compliance. §§ 163.3184(9)(b), 163.3184(11)(a), and 163.3189(2), Fla. Stat. For the reasons stated below and in the

Determination of Non-Compliance, which is attached as Exhibit A, and upon review of the record, the Commission adopts the findings of fact and conclusions of law set forth in the Corrected Recommended Order, which is incorporated and attached as Exhibit B, except as modified herein.

BACKGROUND

On May 6, 2009, Miami-Dade County adopted an amendment to its Comprehensive Development Master Plan ("CDMP" or "Comprehensive Plan") by Ordinance 09-28. The Amendment changed the future land use designation of a 41-acre parcel from Low-Medium Density Residential Communities to Business and Office. The Department reviewed the Amendment and published a Notice of Intent to find it "in compliance."

Petitioners Flagler Retail Associates, Ltd., Flagler S.C., LLC, and SC Mota Associates, Ltd. ("Petitioners") timely filed a Petition challenging the Amendment. This Petition was dismissed without prejudice. An Amended Petition was subsequently filed, found sufficient and referred to the Division of Administrative Hearings for the assignment of an Administrative Law Judge ("ALJ"). Petitioners later filed a Second Amended Petition which added allegations regarding their standing as "affected persons." Blue Lake Development Corporation ("Blue Lake"), owner of the property subject to the Amendment, was granted leave to intervene.

The final hearing was held March 1-3, 2010, in Miami, Florida. Upon consideration of the evidence and post-hearing filings, the ALJ entered a Corrected Recommended Order recommending that the Department determine the Amendment to be not "in compliance" and forward this matter to the Administration Commission for final agency action. See § 163.3184(9)(b), Fla. Stat. Intervenor Blue Lake and the County filed Exceptions, the Department joined in most of those Exceptions, and the Petitioners filed a Response to the Exceptions.

After receipt of the Corrected Recommended Order, the Exceptions and the Response, the Department issued a Determination of Non-Compliance in which the Department recommends that the Amendment be found not "in compliance" and forwarded this proceeding to the Commission for final agency action.

STANDARD OF REVIEW FOR RECOMMENDED ORDER AND EXCEPTIONS

The Administrative Procedure Act provides that the Commission will adopt the ALJ's Recommended Order except under certain limited circumstances. The Commission has only limited authority to reject or modify the ALJ's findings of fact:

> The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

§ 120.57(1)(l), Fla. Stat.

When fact-finding functions have been delegated to an ALJ, as is the case here, the Commission must rely upon the record developed before the ALJ. See Fox v. Treasure Coast Reg'l Planning Council, 442 So. 2d 221, 227 (Fla. 1st DCA 1983). As the ALJ in an administrative proceeding is the trier of fact, he or she is privileged to weigh and reject conflicting evidence. See Cenac v. Fla. State Bd. of Accountancy, 399 So. 2d 1013, 1016 (Fla. 1st DCA 1981). Therefore, "[i]t is the ALJ's function in an agency proceeding to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent substantial evidence." Bejarano v. State of Fla., 901 So. 2d 891, 892 (Fla. 4th DCA 2005)(quoting Heifetz v. Dep't of Bus. Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (citing State Beverage Dep't v. Ernal, Inc., 115 So. 2d 566 (Fla. 3rd DCA 1959))). The Commission cannot reweigh evidence considered by the ALJ, and cannot reject findings of fact made by the ALJ if those findings of fact are supported by substantial competent

evidence in the record. Heifetz, 475 So. 2d 1277 (Fla. 1st DCA 1985). Competent substantial evidence means "such evidence as will establish a substantial basis of fact from which a fact at issue can be reasonably inferred," and evidence which "should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

The Commission may modify or reject conclusions of law in the Recommended Order over which it has substantive jurisdiction, and the standard for review is well-settled. See § 120.57(1)(l), Fla. Stat. When rejecting or modifying a conclusion of law, the Commission must state with particularity its reasons for rejecting or modifying such conclusion of law. Any substituted conclusion of law must be as or more reasonable than the conclusion of law provided by the ALJ in the recommended order. Id.

The label assigned a statement is not dispositive as to whether it is a finding of fact or conclusion of law. See Kinney v. Dep't of State, 501 So. 2d 1277 (Fla. 5th DCA 1987). Conclusions of law labeled as findings of fact, and findings labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

Because the County's CDMP is a body of law, the ALJ's interpretations of the Comprehensive Plan provisions are conclusions of law subject to *de novo* review. See Nassau County v. Willis, 41 So. 3d 270, 278-79 (Fla. 1st DCA 2010).

In this case, the County's interpretation of its Comprehensive Plan must be upheld if the interpretation is fairly debatable. See §163.3184(9)(a), Fla. Stat. The fairly debatable standard of review is "highly deferential" and "requir[es] approval of a planning action if reasonable persons could differ as to its propriety." Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997). As the Florida Supreme Court emphasized in Yusem, "[a]n 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 to a logical deduction that in no way involves constitutional validity." Id. (citations omitted, emphasis added). The "fairly debatable" standard comports with the Florida Supreme Court's directive that the reviewing tribunal "should not substitute its judgment for that of the [local government]." City of Miami Beach v. Lachman, 71 So. 2d 148, 152 (Fla. 1953), cited with approval in Yusem, 690 So. 2d at 1295; *See also* Orange County v. Costco Wholesale Corp., 823 So. 2d 732, 739 (Fla. 2002) ("[T]he legitimate exercise of a governing body's authority in addressing the particular needs of each community cannot be judicially constrained by requiring conformity to a single, inflexible rule.").

> [S]ome questions are not dominated by algebraic equations but instead must be informed by human judgment of elected officials. Their judgment is then subjected to agency review under established methods, principles, and standards by officials having expertise in the subject. That agency [DCA] properly defers to the County's judgment [as to its own comprehensive plan] and intervenes only when there is a palpable misapplication of governing law.

Indian Trail Improvement Dist. v. Dep't of Cmty. Affairs, 946 So. 2d 640, 642 (Fla. 4th DCA 2007).

RULINGS ON EXCEPTIONS

The County and Intervenor Blue Lake each filed a set of exceptions to the Corrected Recommended Order, and the Department joined in all the County's Exceptions and in most of Blue Lake's Exceptions. The Department's Determination of Non-Compliance addresses those exceptions. The Department's recommended rulings on the exceptions are not binding on the Commission; however they were reviewed and considered by the Commission in conjunction with the record below, the Corrected Recommended Order and the parties' post-hearing filings.

Miami-Dade County's Exceptions

Exception One: Paragraph 12 (and Blue Lake Exception Two)

County Exception One and Blue Lake Exception Two both address Paragraph 12, which in turn addresses Policy LU-8E. That Policy states:

> Applications requesting amendments to the CDMP Land Use Plan map shall be evaluated to consider consistency with the Goals, Objectives and Policies of all Elements, other timely issues, and in particular the extent to which the [Plan Amendment], if approved, would
>
> > i) Satisfy a deficiency in the Plan map to accommodate projected population or economic growth of the County; [and]
> >
> > ii) Enhance or impede provision of services at or above adopted LOS Standards; [and]
> >
> > iii) Be compatible with abutting and nearby land uses and protect the character of established neighborhoods; and
> >
> > iv) Enhance or degrade environmental or historical resources, features or systems of County significance; and
> >
> > v) If located in a planned Urban Center, or within 1/4 mile of an existing or planned transit station, exclusive busway stop, transit center, or standard or express bus stop served by peak period headways of 20 or fewer minutes, would be a use that promotes transit ridership and pedestrianism as indicated in the policies under Objective LU-7, herein.

The County raises two objections to the following portion of Finding of Fact 12:

> The various factors in Policy [LU-8E] are weighed and balanced when considering a map change. However, paragraph (i) is considered by the County to be the "primary," or at least an "important," factor when reviewing map changes since the County must ensure that there is enough land for different types of uses to accommodate the projected growth within the County. In fact, a County witness could recall no more than one or two instances over the last thirty years where the County had approved a LUP map change when the staff had determined that there was a lack of need under this provision.

First, the County alleges that the cited Comprehensive Plan provisions are "non-binding criteria" that do not "prohibit a plan amendment from being adopted if it does not satisfy these criteria." Exceptions at 3. The County bases this argument in the language of Policy LU-8E that

directs that the listed factors are to be "evaluated," which, continues the County, does not require that a plan amendment be consistent with the factors in Policy LU-8E.

The Administration Commission very recently rejected an identical argument in Woods v. Marion County, Final Order No. AC-09-006. The Final Order adopted *en toto* the Department's Determination of Non-Compliance, which reads, in pertinent part, as follows:

> To read Policy 12.3 as urged by Intervenors and the County would essentially eliminate it from the Comprehensive Plan. If it required only that the Board of County Commissioners "evaluate," "consider" and "balance" the listed factors, and allowed approval of future land use map amendments despite a complete lack of demonstrated need, Policy 12.3 would be neither meaningful nor predictable. This interpretation is inconsistent with the basic content requirements of a local comprehensive plan. See Fla. Admin. Code r. 9J-5.005(6) ("Goals, objectives and policies shall establish meaningful and predictable standards for the use and development of land....").

Final Order No. AC-09-006 at 5 & Exhibit A at 7.

Second, the County argues that 1) the ALJ erred in concluding that "paragraph (i) is considered by the County to be the 'primary,' or at the very least an 'important,' factor;" and that 2) the ALJ erred in concluding that Policy LU-8E establishes a threshold, bright-line rule that requires the County Commission to justify each plan amendment through the use of a quantitative needs analysis: a comparison of the relative supply of residential, commercial, industrial, and other land uses in a given area. The County's Chief Planner testified at the final hearing that the disputed Paragraph has historically been treated as primary or very important. Tr. at 161-64. Therefore, the ALJ's findings that the County considered Paragraph (i) to be the "primary" or an "important" factor is supported by competent substantial evidence. However, the County is correct that the text of Policy LU-8E does not expressly state that Paragraph (i) is considered to be a primary consideration and does not establish a bright-line requirement for a quantitative needs analysis. Therefore, the County's consideration of Paragraph (i) as the "primary" or an "important" factor is irrelevant.

Although contained within a paragraph labeled as a finding of fact, the ALJ's statement constitutes a legal interpretation of Policy LU-8E. Contrary to the ALJ's legal interpretation, Policy LU-8E does not identify priorities among the various evaluation criteria. Subsection (i) does not mandate that the County conduct the type of quantitative needs analysis required by the ALJ: it simply requires that the County evaluate the plan amendment to determine if the plan amendment "[s]atisf[ies] a deficiency." By adding an additional substantive requirement to Policy LU-8E that does not appear in the plain text of the provision, the ALJ committed clear legal error. State v. J.M., 824 So. 2d 105, 111 (Fla. 2002) (quoting Hayes v. State, 750 So. 2d 1, 4 (Fla.1999)) ("when construing statutes, courts 'are not at liberty to add words to statutes that were not placed there by the Legislature'"). The Commission finds that this legal interpretation of Policy LU-8E is more reasonable than the ALJ's conclusion of law.

The one additional ground raised by Blue Lake addresses the last sentence of Finding of Fact 12, which reads as follows: "In fact, a County witness could recall no more than one or two instances over the last thirty years where the County had approved a LUP map change when the staff had determined that there was a lack of need under this provision." Blue Lake argues that the record testimony actually is that staff had recommended approval of a plan amendment in only one or two instances where there was no demonstration of need under Policy LU-8E(i). Blue Lake is correct: a review of the record shows there is no competent substantial evidence to support the ALJ's finding. The evidence shows that the staff, not the county, had recommended approval in only one or two instances.

County Exception One and Blue Lake Exception Two are GRANTED in part, and the last part of Paragraph 12 is modified as follows:

> The various factors in the Policy are weighed and balanced when considering a map change. ~~However, p~~ Paragraph (i) is considered by the County to be the

> "primary," or at the very least an "important," factor when reviewing map changes since the County must ensure that there is enough land for different types of uses to accommodate the projected growth within the County. ~~In fact, a~~ A County witness could recall no more than one or two instances over the last thirty years where the County planning staff had recommended approval ~~approved~~ of a LUP map change when the staff had determined that there was a lack of need under this provision. However, the language of Policy LU-8E does not identify any portion of the Policy as more important than any other portion, and does not require a quantitative needs analysis as the sole method for establishing a deficiency for purposes of LU-8E(i). A showing that the Plan Amendment is consistent with the Goals, Objectives, and Policies of the Comprehensive Plan is sufficient to satisfy the criteria set forth in LU-8E.

In all other respects, County Exception One and Blue Lake Exception Two are DENIED.

Exception Two: Paragraph 14

Exception Two is based on "the reasons explained in Exception 1." The portion of Exception One that was granted above does not support this Exception.

Exception Two is DENIED.

Exception Three: Paragraph 21

The County alleges that the ALJ erred in Finding of Fact 21 in stating that certain conclusions were those of "the County." The County argues that the ALJ "erroneously conflates the staff's recommendation with the official policy of the County." The only record evidence of the County's "official policy," the interpretation of the Comprehensive Plan, and the various needs analyses is the testimony of the County's Chief Planner. The testimony supports the findings of the ALJ, and such findings are supported by competent substantial evidence.

The County next argues that the ALJ did not find that the data and analysis submitted by Blue Lake's consultant was professionally unacceptable and, therefore, erred in his "decision to 'credit[]' one report over another." The ALJ did not credit one report over another: he simply did not afford the Blue Lake report any credit due to the numerous cited deficiencies. The ALJ essentially found that a report afforded no credit due to a list of deficiencies is not professionally acceptable. Further,

as the ALJ in an administrative proceeding is the trier of fact, he or she is privileged to weigh and reject conflicting evidence. See Cenac, 399 So. 2d at 1016.

Exception Three is DENIED.

Exception Four: Paragraphs 23 & 25

With respect to Finding of Fact 23, the County takes issue with the finding that 25,000 square feet of ancillary commercial could be constructed as part of the elderly housing component of the Amendment. A review of the record shows there is competent substantial evidence to support this Finding.

The remaining portions of this Exception do not accurately characterize the portions of Finding of Fact 25 with which they take issue. The ALJ did not find that the elderly housing units were tied to a site plan "requiring those units to be located in any particular configuration or location on the property" or that "those units [were] to be developed as a precondition to any commercial development." The ALJ found only that two acres of land - with no specified location or configuration - were to be allocated for the development of elderly housing units prior to any commercial development.

Exception Four is DENIED.

Exception Five: Paragraph 33

The County contends that the ALJ erroneously concluded in Finding of Fact 33 that Subsection (i) of Policy LU-8E "is one of the most important, if not primary, consideration when reviewing LUP map changes," and requires a quantitative needs analysis. Although these statements appear in a finding of fact, they are interpretations of the County's Plan and are conclusions of law. The ALJ found in Finding of Fact 12 that the County staff has a history of treating a quantitative needs analysis as the primary consideration, but the language of Policy LU-8E

does not support the ALJ's conclusion that the Policy requires such treatment. It is more reasonable to conclude that a quantitative needs test is only one of five factors the County should evaluate when adopting amendments to the CDMP. This conclusion is more reasonable than the ALJ's conclusion of law.

Exception Five is GRANTED, and Paragraph 33 is modified as follows:

> 33. ~~Despite efforts by the County at hearing to downplay the importance of Policy LU-8E(i) in its review process, it can be inferred that a needs analysis under that provision is one of the most important, if not primary, consideration when reviewing LUP map changes. This is borne out by the fact that except for one or two occasions, the County has never approved a map change over the last thirty years without a needs analysis supporting that change.~~ The evaluation of whether a map amendment satisfies a quantitative need is one way to identify a deficiency as required by Policy LU-8E(i). The evidence supports a finding that the amendment ~~is inconsistent with~~ has not demonstrated it satisfies a quantitative need for purposes of Policy LU-8E(i) because there is no need for 375,000 square feet of new commercial development within the study area (MSAs 3.2 and 5.4). More specifically, the relevant data and analysis used by the County reveal that the MSA in which the property is located (MSA 3.2) has the second highest ratio of commercial activity to population of the 32 MSAs in the County; that the supply of existing or available commercial land use will not be depleted for at least another fifteen years; and that there is no "deficiency" of commercial land in the study area to accommodate projected population or growth, as required by the Policy. Although the amendment will authorize at least 375,000 square feet of new commercial development, both the County and Department concede that a need for more commercial land does not exist. It is beyond fair debate that the amendment ~~is inconsistent with~~ does not satisfy a quantitative need for purposes of Land Use Element Policy LU-8E(i). However, for the reasons set forth in the ruling on Exception One, this finding is not dispositive as to whether the Plan Amendment is internally consistent with Policy LU-8E(i). ~~Likewise, because the data and analysis do not support the amendment, but rather support a contrary result, the County reacted to the data in an inappropriate manner. See Fla. Admin. Code R. 9J-5.005(2).~~

Exception Six: Paragraph 35

The County argues that a portion of Finding of Fact 35 must be rejected as an erroneous conclusion of law to the extent it "creat[es] an entirely new requirement that exists nowhere in the CDMP - namely, that the County must study the need for 'elderly housing' or 'mixed use projects' within particular sub-areas of the County."

The County argued at the final hearing that although no quantitative "need" for additional commercial acreage exists in the designated study area – minor statistical areas (MSAs) 3.2 and 5.4 – that the inclusion in the Amendment of components for elderly housing units and commercial satisfied a "need" for these two development types. The ALJ, in response to this argument, noted that "the County made no study of the need for 'elderly housing' or 'mixed use projects' within MSAs 3.2 and 5.4." This finding is supported by competent substantial evidence.

This Exception also relies in part upon arguments made in support of Exception One. Although the Commission granted the portion of Exception One that addresses the conclusion of law interpreting Policy LU-8E, "[r]ejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact." § 120.57(1)(l), Fla. Stat. However, consistent with the Commission's ruling on that portion of Exception One, Paragraph 35 is modified as follows:

> 35. To support the contention that a need for elderly housing exists, the County posited that there is a need, "in general," for elderly housing in the County. It also pointed out that between the years 2000 and 2008 there was a small percentage increase in the number of persons over 65 years of age residing in the County. See County Exhibit 64. But the County agrees that the quantitative needs test in Policy LU-8E(i) does not distinguish between different types of residential use, such as whether properties are available for elderly residents. Neither does the quantitative needs test assess the need for mixed uses. ~~Therefore, regardless of whether or not there is a need for elderly housing or mixed use projects, any such need does not address the needs test in Policy LU-8E(i).~~ Even assuming arguendo that it does, the County made no study of the need for "elderly housing" or "mixed use projects" within MSAs 3.2 and 5.4. However, the Comprehensive Plan does not require a quantitative needs analysis as the sole method for establishing consistency with Policy LU-8E(i) when the Plan identifies deficiencies in other Goals, Objectives, and Policies.

In all other respects, Exception Six is DENIED.

Exception Seven: Paragraph 36

The County contends that Paragraph 36 restates the conclusion of law regarding Policy LU-8E which the Commission corrected above in ruling upon Exception One. Contrary to the ALJ's legal conclusion, a quantitative needs analysis does not trump the County's attempt to address other deficiencies identified in the Comprehensive Plan. The County may justify a plan amendment by a showing that the plan amendment addresses deficiencies identified in the various Goals, Objectives, and Policies of the Comprehensive Plan. As a result, the ALJ's findings of fact that: (i) the plan amendment "would certainly 'rejuvenate' an area now occupied by a closed, 50-year-old mobile home park, and result in the redevelopment of what is now probably a substandard urban area" and (ii) the Comprehensive Plan identifies in Land Use Concept 8 and Land Use Policy LU-10A the need to rejuvenate substandard urban areas, constitute (in and of themselves) sufficient support for a finding that the plan amendment is internally consistent with Policy LU-8E. This conclusion is more reasonable than the ALJ's conclusion of law.

Exception Seven is GRANTED, and Paragraph 36 is modified as follows:

> 36. The County and Blue Lake also contend that the proposed mixed use furthers other laudable provisions within the Plan, which more than offset any lack of commercial need. ~~While d~~ Development of the property under the current or not yet effective new land use would certainly "rejuvenate" an area now occupied by a closed, 50-year-old mobile home park, and result in the redevelopment of what is now probably a substandard urban area, See Land Use Concept 8 and Land Use Policy LU-10A. ~~, furtherance of those provisions by creating a new commercial land use category does not trump the lack of need for more commercial land.~~

Exception Eight: Paragraph 37

In Paragraph 37, the ALJ found that "the elderly housing component was intended to address a need for affordable or subsidized housing for senior citizens." The County takes exception to this finding on the ground that "the CDMP nowhere contains any such policy." The ALJ found that the

Declaration of Restrictions, which is an adopted part of the CDMP, allowed for the inference that elderly housing was to be affordable. This inference was confirmed by testimony at the hearing.

The County argues that "the ALJ's conclusion that the Department supported the Plan Amendment specifically because of elderly housing is not supported by competent substantial evidence" because the Department also supported the Amendment because of the County's mixed-use policies. The ALJ actually found that "the Department found the amendment, as adopted, was in compliance because the final version of the Declarations of Restrictions introduced an elderly housing mixed-use component . . . ." The ALJ's findings are supported by competent substantial evidence.

This Exception also relies upon arguments made in support of "the foregoing Exceptions." The Commission's rulings above on Exceptions One, Five and Seven regarding Policy LU-8E do not affect the findings of fact made in Paragraph 37.

Exception Eight is DENIED.

Exception Nine: Paragraphs 38 & 39

The County asserts that "[i]n Paragraphs 38-39, the ALJ demands a more precise definition of 'elderly housing' than the CDMP itself requires." In those two Paragraphs, the ALJ makes numerous findings regarding the term "elderly housing" as it is defined, by reference, in the fifth version of the Declaration of Restrictions. The ALJ does not make any conclusions regarding the required precision of CDMP definitions. Furthermore, the County does not contend that these findings are not supported by competent substantial evidence.

Exception Nine is DENIED.

Exception Ten: Paragraph 41

The County takes exception to the ALJ's conclusion in Paragraph 41 that it is beyond fair debate that the plan amendment is internally inconsistent with Policy LU-8E(i). This Exception relies upon arguments made in support of "the foregoing Exceptions." The Commission granted Exceptions One, Five and Seven above regarding the interpretation of Policy LU-8E, which requires a change to the conclusions of law in Paragraph 41. As the Commission ruled above on Exceptions One, Five and Seven, the several provisions of Policy LU-8E are entitled to equal weight. Since the "fairly debatable" standard of proof applies to this proceeding, the County Commission's balancing of the various factors in Policy LU-8E is entitled to great weight. By reweighing and rebalancing different goals in the CDMP, the ALJ usurped the essential legislative function of the Board of County Commissioners, in violation of the "fairly debatable" standard. See, e.g., Yusem, 690 So. 2d at 1295. Based upon the findings of fact in the Corrected Recommended Order, which have not been modified by this Final Order, it is at least fairly debatable that the Amendment complies with Policy LU-8E. This conclusion is more reasonable than the ALJ's conclusion of law, and requires modification of the ALJ's conclusion of law in Paragraph 41.

Exception Ten is GRANTED, and the first sentence of Paragraph 41 is replaced with the following:

> 41. In summary, it is at least fairly debatable that (a) the plan amendment is internally consistent with Land Use Policy LU-8E; (b) the change in land use is supported by the most relevant and appropriate data and analysis; (c) by adopting the amendment, the County reacted to the data and analysis in an appropriate manner; and (d) the plan amendment furthers other Plan provisions that encourage the rejuvenation of decayed urban areas with mixed uses.

Exception Eleven: Paragraph 45

For the same reasons stated in the ruling on Exception Ten, Exception Eleven is GRANTED, and Paragraph 45 is replaced with the following:

> 45. For the reasons given in the Findings of Fact, it is at least fairly debatable that the plan amendment is internally consistent with Policy LU-8E requiring that the amendment be consistent with the Goals, Objectives and Policies of all elements, is supported by the most relevant and appropriate data and analysis, as required by Rule 9J-5.005(2), and the County reacted to the data in an appropriate manner. The plan amendment furthers the Plan provisions encouraging the rejuvenation of decayed urban areas by introducing mixed uses. On balance these considerations outweigh the failure to demonstrate need.

Blue Lake's Exceptions

Exception One: Paragraph 8

Blue Lake takes exception to the finding that "[d]irectly to the west of the property and across West Park Drive is a part of the Florida International University campus," alleging that it is not supported by competent substantial evidence. Petitioners did not file any opposition to this Exception.

A review of the record demonstrates that there are uses directly to the west of the property - specifically, a church and a park - that are between the property and the Florida International University campus. Thus, the campus is not directly to the west of the property, and this portion of Finding of Fact 8 is not supported by competent substantial evidence.

Accordingly, the disputed portion of Finding of Fact 8 is modified as follows: "Directly to the west of the property and across West Park Drive is a church, a county park, and part of the Florida International University campus."

Blue Lake Exception One is GRANTED.

Exception Two: Paragraph 12

This Exception is addressed above in conjunction with the County's Exception One.

Exception Three: Paragraph 14

Blue Lake argues that Paragraph 14 should be rejected because the ALJ found "the use of census tracts 'inappropriate' for a needs analysis." The ALJ's actual Findings are as follows:

> Another geographic area known as a census tract, which is much smaller than an MSA, is also allowed by the Plan. See Land Use Element Policy LU-8F ("the adequacy of land supplies. . . for business and office uses shall be determined on the basis of localized subarea geography such as Census Tracts, [MSAs] and combinations thereof"). As noted below, however, the County has never used a census tract and considers them to be "inappropriate" for a needs analysis such as this. [emphasis added]

The ALJ did not find the use of census tracts always inappropriate; it was found to be so in this instance. A review of the record shows the underscored portion of Paragraph 14 is supported by competent substantial record evidence.

Blue Lake also alleges that there is no competent substantial evidence to support the Finding that a "needs analysis determines the availability of commercial land in a given area relative to the availability of residential land." However, a review of the record shows the ALJ's finding is supported by competent substantial evidence.

Exception Three is DENIED.

Exception Four: Paragraph 15

Blue Lake takes exception to the "ALJ's finding that the County concluded that the residential supply with the MSA 3.2 and 5.4 [sic] would be depleted by the year 2015." A review of the record shows this finding is supported by competent substantial evidence.

Exception Four is DENIED.

Exception Five: Paragraph 20

Blue Lake takes exception to the ALJ's finding that the consultant used a study area of four census tracts in his commercial needs analysis. A review of the record shows there is no competent substantial evidence to show the consultant used a study area of four census tracts. The evidence

shows that the consultant used a study area of ten census tracts (corresponding to the geographic description in the last two sentences of this Paragraph). Accordingly, the second sentence of Paragraph 20 is modified as follows: "As a study area, the consultant used ~~four~~ ten census tracts (rather than MSAs) comprising around two square miles."

The remainder of this Exception requests that the Commission "include the following undisputed findings of fact." The Commission is without the authority to include supplemental findings of fact in this Final Order.

Exception Five is GRANTED IN PART and DENIED IN PART.

Exception Six: Paragraph 21

Blue Lake takes exception to the ALJ's finding that its consultant's needs analysis would "not be[] credited" based on "the deficiencies cited by the County." Blue Lake specifically argues that there is no record basis for its consultant's needs analysis to be deemed professionally unacceptable.

The overwhelming majority of this Exception presents record citations in support of Blue Lake's contention that its consultant's report must be deemed professionally acceptable. The only question before the Commission, however, is whether there is competent substantial evidence to support the ALJ's findings. Weighing this evidence and drawing permissible inferences therefrom are tasks solely within the province of the ALJ as the finder of fact. See Cenac, 399 So. 2d at 1016. A review of the record shows there is competent substantial evidence to support the ALJ's findings.

Exception Six is DENIED.

Exception Seven: Paragraph 23

This Exception mirrors County Exception Four, the ruling on which is incorporated by this reference.

Exception Seven is DENIED.

Exception Eight: Paragraph 25

This Exception mirrors County Exception Four, the ruling on which is incorporated by this reference.

Exception Eight is DENIED.

Exception Nine: Paragraph 26

This Exception mirrors County Exception One and Blue Lake Exception Two, the rulings on which are incorporated by this reference.

Exception Nine is GRANTED in part and DENIED in part.

Exception Ten: Paragraph 33

This Exception mirrors County Exception Five the ruling on which is incorporated by this reference.

Exception Ten is GRANTED.

Exception Eleven: Paragraph 34

This Exception incorporates other Blue Lake Exceptions, the rulings on which are incorporated by this reference.

Exception Eleven is DENIED.

Exception Twelve: Paragraph 35

This Exception repeats the arguments set forth in County Exception Six, the recommended rulings on which are incorporated by this reference.

Exception Twelve is GRANTED in part and DENIED in part.

Exception Thirteen: Paragraph 36

This Exception repeats many of the arguments set forth in County Exception Seven, the rulings on which are incorporated by this reference.

Exception Thirteen is GRANTED.

Exception Fourteen: Paragraph 37

This Exception repeats the arguments set forth in County Exception Eight, the rulings on which are incorporated by this reference.

Exception Fourteen is DENIED.

Exception Fifteen: Paragraphs 38-39

This Exception repeats the arguments set forth in County Exception Nine, the rulings on which are incorporated by this reference.

Exception Fifteen is DENIED.

Exception Sixteen: Paragraph 41

This Exception mirrors County Exception Ten the ruling on which is incorporated by this reference.

Exception Sixteen is GRANTED.

Exception Seventeen: Paragraph 45

This Exception mirrors County Exception Eleven, the recommended rulings on which are incorporated by this reference.

Exception Seventeen is GRANTED.

Exception Eighteen: Paragraph 47

Paragraph 47 addresses Blue Lake's claim for attorney fees against the Petitioners pursuant to section 120.595(1). That section provides that the ALJ in the recommended order, not the

Commission in its final order, determines whether a party participated in a proceeding for an improper purpose. The Commission has no jurisdiction regarding the ALJ's ruling on attorneys fees. G.E.L. Corp. v. Dept. of Env. Protection, 875 So. 2d 1257 (Fla. 5th DCA 2004). The ALJ has retained jurisdiction to address the claims for attorney fees in the event a final order is rendered determining that the amendment is in compliance. Since this Final Order does determine that the Amendment is in compliance, this issue can be resolved by the ALJ.

Exception Eighteen is DENIED.

CONCLUSION

The Commission hereby adopts the ALJ's Findings of Fact and Conclusions of Law in the Corrected Recommended Order, except as modified or rejected herein.

Upon review of the entire record, the Corrected Recommended Order, the Exceptions, the Responses to Exceptions, and the Department's Determination of Non-Compliance, the Commission determines that the Amendment (Application No. 9) adopted by Miami-Dade County by Ordinance No. 09-28 is "in compliance."

NOTICE OF RIGHTS

Any party to this Final Order has the right to seek judicial review of the Final Order pursuant to section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Commission Office of Policy and Budget, Executive Office of the Governor, the Capitol, Room 1801, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days of the day this Final Order is filed with the Clerk of the Commission.

DONE AND ORDERED this 10th day of March, 2011.

Phillip B. Miller

For JERRY L. MCDANIEL, Secretary
Administration Commission

FILED with the Clerk of the Administration Commission on this 10th day of March, 2011.

Barbara Leighty

Clerk, Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Administration Commission and that a copy of the foregoing has been furnished by U.S. Mail on this 10th day of March, 2011 to:

Barbara Leighty
Clerk, Administration Commission

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Chief Financial Officer
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