

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHEN DIBBS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 12-1850GM  
 )  
 HILLSBOROUGH COUNTY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

This matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, D. R. Alexander, on February 14 and 15, 2013, in Tampa, Florida.

APPEARANCES

For Petitioner: Kristin M. Tolbert, Esquire  
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Tampa, Florida 33605-3819

For Respondent: Louis Whitehead, III, Esquire  
Senior Assistant County Attorney  
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STATEMENT OF THE ISSUE

The issue is whether certain revisions to the Liveable Communities and Transportation Elements of the Comprehensive Plan (Plan) adopted by Hillsborough County (County) on May 17, 2012, are in compliance.

PRELIMINARY STATEMENT

Parts of two plan amendments are being challenged in this proceeding. Plan Amendment No. 12-01 is an update of the Keystone-Odessa Community Plan (KOC), a part of the Livable Communities Element. Plan Amendment No. 12-03 is an update of the County's Right-of-Way Corridor Preservation Plan (Corridor Preservation Plan), an appendix in the Transportation Element.

Petitioner, Stephen Dibbs, who owns property in the Keystone-Odessa community area, filed with DOAH his Petition for Administrative Hearing challenging both amended and non-amended parts of the KOC and the deletion of one provision in the Corridor Preservation Plan. However, allegations directed to those parts of the KOC not revised by Plan Amendment 12-01 were stricken, and Petitioner was directed to file an amended pleading. An Amended Petition for Administrative Hearing (Amended Petition) was then filed challenging only revised provisions. Because the second pleading was never amended, and the County did not consent to new issues being added just prior to hearing, only the allegations in that pleading are at issue. At hearing, the undersigned granted the County's Motion in Limine to limit the introduction of evidence on provisions not revised by the plan amendments or on allegations not included in the Amended Petition.

The parties filed separate Pre-Hearing Stipulations. At the final hearing, Petitioner testified on his own behalf and presented the following fact witnesses: Kenneth D. Roberts, Ronald Andrew Haney, Dimitri Artzibushev, Obie Howard, and David T. Potts, all residents of the Keystone-Odesa community area. Expert testimony was presented by Debra A. Kennaugh, a professional engineer with Crossroads Engineering, Inc.; Dr. Donald Richardson, a biologist and owner of Ecological Consultants, Inc.; Patricia A. Ortiz, a certified planner with Ortiz Planning Solutions, LLC; Jeremy Couch, a professional engineer with Tampa Civil Design; James M. Hosler, a demographer and economic planner; Dr. Asim Khan, an economist; and Steve Allison, a certified planner. Also, Petitioner's Exhibits 3-5, 7, 8, 11, 14-18, 23, 24, 31, 33, 34, 42, 45, 49, 51, 52, 55-64, 67, 69, 74, 77, 80, 129, and 142 were received in evidence. The County presented the testimony of Melissa E. Zornitta, Assistant Executive Director of the City-County Planning Commission (Planning Commission) and accepted as an expert; and Pedro Parra, Principal Planner of the Planning Commission and accepted as an expert. Also, County Exhibits 1-6 were received in evidence.

A Transcript of the hearing (four volumes) has been prepared. Proposed Findings of Fact and Conclusions of Law were

filed by the parties, and they have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### A. The Parties

1. The County is a local government within the meaning of section 163.3164(29), Florida Statutes, and has the responsibility of administering its Plan. It adopted the challenged amendments under the expedited state review process codified in section 163.3184(3).

2. Petitioner owns a vacant, undeveloped parcel in the County, described as being between "320 and 360 acres" in size. The parcel is located on Lutz Lake Fern Road just west of the intersection of that roadway and the Suncoast Parkway in the northeastern corner of the KOCP. Mr. Dibbs is concerned that the amendments will prevent him from developing his property in a meaningful way. During the amendment process, he submitted written and oral comments objecting to the two amendments.

##### B. The KOCP

3. The Livable Communities Element is an optional element in the Plan. Besides the KOCP, it contains 20 other community plans, and the County is currently in the process of adopting three others. The community plans were originally in the Future

Land Use Element (FLUE) but were moved to the Livable Communities Element in 2008.

4. A community plan is comprised of a study area and discusses the special and unique characteristics of the study area, examines the issues and problems facing that area, and provides strategies for solutions. In contrast to the Plan, which is more general in nature and provides broad planning guidance on a countywide basis, the community plan is more detailed in nature and is intended to provide specific recommendations on issues in a particular area of the County.

5. The original KOCP was adopted in 2001 and was found to be in compliance by the then Department of Community Affairs. The Plan requires that it be updated every ten years. The current version consists of 11 pages of unnumbered narrative text, divided into 15 sections. At issue in this case are certain revisions to the Rural Residential Community Character, Commercial, and Transportation sections.

6. The KOCP study area, comprising almost 23,000 acres, is located in the northwestern corner of the County and is bordered on the west by Pinellas County, on the north by Pasco County, on the east by Dale Mabry Highway, and on the south by Race Track and Ehrlich Roads. Because a wellhead protection area occupies a significant part of the KOCP, more than half of the KOCP

cannot be developed, and only around 20 percent of the remaining land is potentially available for development.

7. Many areas of the County have high population centers and an urban character; however, the Keystone-Odessa community, which makes up the study area, is characterized in the KOCP as "rural" in nature, with many lakes, wetlands, creeks, and a network of two-lane rural roads. There are, however, commercial enclaves, planned developments, and residential subdivisions within the community area. Most, if not all, of these projects were approved or vested before the adoption of the KOCP. In addition, some of the roads are highly congested. A few small areas (less than 10 percent of the KOCP) lie within the urban service area and can receive water and sewer services, while properties that are vested but not in the urban service area can also receive those services. The record contains different population estimates for the area. The Planning Commission used an estimated 2009 population of 10,700 in its support data; in February 2009, a Planning Commission employee used census block data to update that estimate to 17,483; and sometime later, Petitioner's demographer relied on June 2011 census block data to arrive at an estimated 2010 population of 21,259.

8. The Planning Commission serves as the local planning agency for all local governments in the County and is tasked

with the responsibility of developing the periodic updates for the community plans. The recommended update is then submitted to the Board of County Commissioners for its final approval. The same review process is used for all community plans.

9. In January 2010, the Planning Commission staff, along with interested citizens who wished to participate in the process, began development of the ten-year KOCP update. Although the entire KOCP was subject to review, most of the effort was directed to the few areas "that the community [participants] brought forward" for possible change; therefore, a substantial part of the original KOCP remains unchanged. Whether other changes to the KOCP could or should have been made is not at issue. The review process included 20 meetings and two open houses over a two-year period and resulted in the adoption of a proposed plan amendment on December 12, 2011. The County approved the recommendation without change and adopted Plan Amendment No. 12-01 on May 17, 2012.

10. No more than 35 or so citizens (out of the thousands who reside in the KOCP area) actively participated throughout the entire Planning Commission review process. However, the evidence shows that it is not unusual for a very small number of persons to participate in a community plan update process.<sup>1</sup> Through various forms of notice, all interested residents and

property owners, including Mr. Dibbs and/or his agents, were given the opportunity to provide input concerning suggested changes to the KOCP. Petitioner contends that a small group of anti-growth activists controlled the review process; that he and his representatives who attended meetings were made to feel "unwelcome"; that the anti-growth group rejected any attempt to reduce or eliminate the restrictions on development within the KOCP; and that the Board of County Commissioners simply rubber-stamped the Planning Commission's recommended changes. Even if this is true, Petitioner's remedy for changing the County's community plan review process lies in another forum, and not in a plan amendment challenge. Notably, Petitioner has not contended that the County failed to comply with the adoption procedures required under the expedited state review process.

C. The Corridor Preservation Plan

11. Besides updating the KOCP, the County also revised its 2025 (now designated as 2035) Corridor Preservation Plan, which identifies the strategy for long-term planning and management of important roadways within the County. The Corridor Preservation Plan is found in Appendix G of the Transportation Element and consists of a multi-page listing of County roadways that are anticipated to need enhancements because of safety or capacity issues. Among other things, it identifies the proposed



enhancements for each roadway or segment included in the Appendix, such as turn lanes, widening, extensions, sidewalks, shoulders, or added bike lanes.

12. Plan Amendment 12-03 deletes a listing on line 5 of page G-7 that provides for the enhancement of Gunn Highway from Pasco County to South Mobley Road. Gunn Highway, "a primary north/south roadway," is a highly congested two-lane arterial road that runs south from Odessa in Pasco County through the Odessa-Keystone community. It is on the County's Table of Highly Congested Roads with about 4,215 hours of daily vehicle delays. Petitioner's property is located on Lutz Lake Fern Road, which appears to intersect with Gunn Highway just south of the Pasco County line.

13. The deletion eliminates Gunn Highway from the Corridor Preservation Ordinance. That Ordinance allows the County to acquire right-of-way from developments as they occur and require setbacks from existing roads in order to preserve future right-of-way for road widening and improvements. Thus, if the County decides at some future time to enhance that part of Gunn Highway, and additional right-of-way is required for a particular improvement, the cost of making that improvement will likely rise. The amendment does not change the roadway in any other respect.

D. Objections to the KOCP

14. Petitioner purchased his property from Tampa Electric Company in 2002 or 2003, or after the initial KOCP was adopted and its development restrictions were in place. Although Petitioner says he knew there were some restrictions when he bought the property, it was not until a few years later that he says he learned the full extent of these restrictions. He desires to develop his property and has a potential buyer who believes that a 920-unit apartment complex could be a successful venture. However, under the current Plan, he is limited to building one dwelling unit per five upland acres (most of the parcel is wetlands), and because the parcel is not in the urban service area, he is prohibited from hooking up to County urban services (water and sewer) even though they are located in the right-of-way of the street in front of his property. At the same time, owners of properties that are vested (grandfathered) are able to develop their properties and connect to water and sewer. For example, one of his neighbors is zoned to allow up to 304 residential units on quarter-acre lots, 25,000 square feet of commercial space, and access to urban services; there is a major subdivision (built by Cheval) across the street to the south; and a major residential subdivision lies to the north just across the Pasco County line. There are also a number of

other planned developments and subdivisions that were approved in the early 1990s before the KOCP was adopted.

15. Even if he prevails on the narrow issues in this case, it appears that Petitioner would still be unable to develop his property in the manner that he chooses unless further amendments to the Plan and/or KOCP are made. His ultimate goal is to "eliminate" the KOCP, which he says is "unconstitutional." In any event, Petitioner has challenged five revisions in the KOCP, which relate generally to strategies for preserving the rural residential community character of the area, locating commercial development, and relieving traffic on Gunn Highway.

a. Rural Residential Community Character Revisions

16. Petitioner contends that two changes in the first paragraph of the section entitled "Rural Residential Community Character" are not in compliance. That section describes the County's vision for the character of the community and expresses a desire that the community retain its rural residential character. As revised, the paragraph reads as follows:

The Keystone-Odessa community desires to retain its ~~predominant~~ rural residential character as an area of lakes, agriculture activities, and homes built on varied lot sizes and in a scattered development pattern. Rural is based on the County's Future Land Use Element, Urban Service Area boundary objectives and policies.

(Underlined language represents new

language, while strike through language has been deleted.)

17. Petitioner's primary concern is that the deletion of the word "predominant" changes the meaning, intent, and application of the provision and will require that the entire area remain rural in perpetuity. In striking the word "predominant," however, the County simply deferred to the standards found in the urban services area boundary objectives and policies of the FLUE, cited in the second sentence of the paragraph. These broad guidelines provide that if land is in the urban service area, the land is considered urban, while land outside the urban service area is considered rural. In distinguishing between rural and urban areas, the FLUE recognizes that within the rural area, there may be small suburban enclaves and other non-rural properties that predate the KOCP and which are located in the urban service area. To make the first sentence more consistent with the Plan, the County removed the word "predominant," as being unnecessary. It is not unreasonable to interpret this revision as not being the equivalent of a declaration that the KOCP is exclusively rural and as not materially changing the meaning of the provision. Finally, it is not unreasonable for the County to rely on FLUE provisions having countywide application in characterizing the Keystone-Odessa area as rural.

18. Petitioner contends that the changes in the paragraph violate sections 163.3177(4)(a) and (6)(a). The first statute requires coordination of the plan with the plans of adjacent local governments. (It does not require coordination with other elements, as alleged in the Amended Petition.) But aspirational amendments that simply express the desire of a community and nothing more do not require review and coordination by Pasco County before being adopted. The second statute requires generally that FLUE amendments be based on surveys, studies, and data regarding the affected area, which include projected population, availability of urban services, proximity to schools, protection of the environment, diversification of the economy, and the like, and which ensure that the amendment does not promote urban sprawl. The plan amendment being challenged is a part of the Livable Communities Element, and not the FLUE. Therefore, the requirements imposed on a local government when adopting a FLUE amendment do not apply.<sup>2</sup> Finally, an allegation that the changes violate Florida law because they may result in "a taking of or unreasonable burden on private property" is not a consideration in a compliance proceeding.

19. Petitioner has failed to prove to the exclusion of all reasonable debate that the revisions are not in compliance.

b. Commercial Revisions

20. This section describes the visions and strategies for commercial uses within the community area. Plan Amendment 12-01 made only minor changes to the section. One change is to place commercial activities into two categories: the "Keystone-Odesa Rural Activity Center" and "Other Commercial." Also, the amendment describes the activities envisioned for each category. The following changes were made to the second sentence in the first paragraph of the Keystone-Odesa Rural Activity Center category:

It is the desire of the community to encourage transfer of development rights for some of ~~this~~ the currently approved unbuilt commercial within the community planning area and to direct the new commercial to the intersection of Gunn Highway and North Mobley Road with the community plan boundary, and to other eligible receiving areas in Hillsborough County.

21. Before the revision, the KOCF reflected a desire by the community to direct new commercial activity to Gunn Highway and North Mobley Road. In the following paragraph of the Commercial section, not changed by Plan Amendment 12-01, the intersection of those two roads is "recognized as a rural activity center." To implement that recognition, the County later developed a section in the Land Development Code defining the intersection of those two roads as the Keystone Activity

Center. The new language is intended to clarify that the KOCP activity center is the intersection of those two roads and to direct new commercial activity to that location. It does not bar commercial development at other locations in the community area, provided that other Plan requirements are met.

22. Petitioner contends that before the revision, commercial activity could be placed "along" the two roads, but the amendment now directs all commercial activity in the KOCP to a single intersection. He argues that the revision violates section 163.3177(4) (a) because the County failed to coordinate this provision with the FLUE. However, the statute requires, where appropriate, coordination of plan amendments with the plans of adjacent local governments, and not coordination with other elements in the Plan. He also contends that the amendment violates subsections 163.3177(6) (a)2. b., d., and h. These provisions prescribe certain requirements for FLUE amendments. Because the changes are to the Livable Communities Element, the requirements do not apply. See Endnote 1, infra.

23. Petitioner has failed to show to the exclusion of all fair debate that these revisions are not in compliance.

c. Transportation Revisions

24. The Transportation section addresses the visions and/or strategies for transportation issues that affect the

community. Among other changes, the County amended the third paragraph of the section by adding the following language:

The community supports the expansion of the Suncoast Parkway to 6 lanes (3 in each direction) to relieve traffic through the Keystone-Odessa Community Plan area.

25. The Suncoast Parkway is a toll road running in a north-south direction from Hernando County to the northern terminus of the Veterans Expressway (in the northern part of the County), passing on the eastern side of the KOCP. The new language does not mandate that the State or any other entity expand the Suncoast Parkway. Also, it does not mean that an expanded toll road would cure all traffic problems throughout the Keystone-Odessa community area. The language is simply a statement of support by the community for the widening of the toll road if that project is ever considered in the future.

26. Petitioner contends that the statement of support must be coordinated with adjacent local governments; that it equates to a failure to provide a safe and efficient transportation system on the other roadways within the KOCP, as required by the Transportation Element; that an expanded Suncoast Parkway cannot relieve traffic on other KOCP roads; and that there is no consensus among the Odessa-Keystone community to support the expansion of the Suncoast Parkway.



27. The amendment depends on future activities, assessments, and decision-making by the County or other entities that have the responsibility of funding and building toll roads. It does not require the County to take any immediate action. In short, it does not mandate anything. Given these considerations, Petitioner has failed to prove to the exclusion of all fair debate that the aspirational language is not in compliance for the reasons alleged.

28. Finally, the penultimate paragraph of the Transportation section, as revised, reads as follows:

Gunn Highway will be identified as a County roadway, which cannot be widened further due to social, economic, policy and environmental constraints. The identified and designated constrained corridors list found in the Transportation Element will also be recognized. ~~The provision to eliminate the truck route on Gunn Highway from Pasco County Line to Van Dyke, when the Suncoast Corridor is completed, will be~~ is enforced as set out by the adopted Hillsborough County Truck Route Ordinance.<sup>3</sup>

29. Since the KOCP was adopted in 2001, Gunn Highway has been constrained to two lanes. Until that language is amended, Gunn Highway "cannot be widened further." This provision was not changed by Plan Amendment 12-01 and is not subject to challenge in this proceeding.

30. The Suncoast Parkway and Veterans Expressway were completed years ago. Therefore, the phrase "when the Suncoast Corridor is completed" is obsolete and should be deleted.

31. When the KOCP was first adopted, the Transportation section contained a provision that would eliminate a portion of Gunn Highway between Pasco County and Van Dyke as a truck route. It further provided that this provision would be enforced after the Suncoast Corridor was completed. During the update process, the County decided that this kind of specific direction does not belong in a community plan and chose to defer that decision to the County's Truck Route Ordinance. That Ordinance contains a list, periodically updated, of designated County roads on which certain types of trucks may operate. The KOCP now acknowledges that Gunn Highway's truck route status will be as designated in the Truck Route Ordinance, a more logical place for that type of decision. It does not force the County to take action one way or the other regarding the status of Gunn Highway.

32. Petitioner contends that these changes violate section 163.3177(2), which provides that coordination of the various elements is a major objective in the planning process, and that the elements should be consistent with one another. Petitioner asserts that the County failed to coordinate with Transportation Element Objectives 1.1, 1.5, and 6.9 and Policy

6.9.1 and the Florida Department of Transportation's Goods Movement Study. The cited objectives, policy, and study require generally that the County provide a safe, efficient, and environmentally sensitive transportation system, and that the transportation system provide for the efficient and effective movement of goods. There is insufficient evidence to establish a lack of coordination between the two elements, or to prove that by deferring the truck route status of Gunn Highway to the Truck Route Ordinance, the County has created an internal inconsistency between the KOCP and the Transportation Element.

33. Petitioner also contends that the amendment violates section 163.3177(6) (a) because it is not based on the necessary surveys, studies, and data required for FLUE amendments. However, the amendment is to the Livable Communities Element and not the FLUE.

34. Petitioner has failed to show to the exclusion of all fair debate that the revisions in the Transportation section of the KOCP are not in compliance.

E. Objections to the Corridor Preservation Plan

35. Plan Amendment 12-03 modifies the County's Corridor Preservation Plan. The changes were required because, since the Corridor Preservation Plan's last update, several community plans, including the KOCP, were adopted, and they provided

direction for widening certain roads and the need for other roadway improvements. Also, in 2009, the Metropolitan Planning Organization adopted a 2035 Long Range Transportation Plan that extended the horizon year by ten years.

36. Among the changes is the removal of the planned expansion and enhancement of Gunn Highway from the Pasco County line to South Mobley Road. According to the staff report, this deletion was required because the adopted community plan says that Gunn Highway should not be widened. The original KOCOP acknowledges, however, that "some changes to roadway configurations may be needed for safety" in the future, but these changes should be limited to turn lanes, pedestrian/equestrian crossings or traffic control mechanisms rather than widening the road. These provisions were not amended by Plan Amendment 12-01 and are not subject to challenge here.

37. Petitioner contends that this amendment violates sections 163.3177(6)(b)1.e. and 337.273. The first statute requires that the Transportation Element reflect the "data, analysis, and associated principles and strategies" relating to "[h]ow the [County] will correct existing facility deficiencies, meet the needs of the projected transportation system, and advance the purpose of this paragraph and the other elements of the comprehensive plan." The second statute provides generally

that if a "transportation corridor" is used by a local government to address transportation issues, it should be included in the comprehensive plan.

38. Petitioner essentially argues that unless the County creates a plan that addresses all failing roads in the KOCP, it cannot delete Gunn Highway from the Corridor Preservation Plan. But this would mean that no amendment affecting transportation in the KOCP, or any other area of the County, could ever be adopted until the County develops a plan for funding and correcting each roadway deficiency. Given the existing constraint on widening Gunn Highway, the effect of the amendment is simply to make the Transportation Element consistent with the KOCP, a requirement under section 163.3177(2). Also, under these circumstances, there was no need to coordinate with Pasco County before making this change.

39. Petitioner also argues that the deletion violates section 163.3177(2) because the County failed to coordinate this change with numerous other Transportation Element objectives and policies, which generally promote right-of-way protection and the use of enhancements for constrained roads.

40. The KOCP currently allows only certain improvements to Gunn Highway. Even though the deletion of the line item may increase the cost of these enhancements, it does not prevent the

County from adding them at a future time. It is at least fairly debatable that the deletion does not conflict with the above objectives and policies, and that the County reviewed the relevant portions of the Transportation Element before the amendment was adopted. Finally, an argument that the deletion violates sections 163.3180(1) and (5) has been rejected.

41. In summary, Petitioner has failed to prove to the exclusion of all fair debate that the deletion in Plan Amendment 12-03 is not in compliance.

42. All other arguments not specifically addressed in this Recommended Order have been considered and rejected.

#### CONCLUSIONS OF LAW

43. The parties have stipulated to the facts necessary to establish that Petitioner is an affected person.

44. The challenged amendments were adopted under the expedited state review process codified in section 163.3184(3). There is no claim that any procedural requirement in that statute was violated.

45. In order for a plan amendment to be in compliance, it must be:

consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in designated areas of critical state concern

and with part III of chapter 369, where applicable.

§ 163.3184(1)(b), Fla. Stat.

46. Section 163.3184(5)(c)1. provides that a plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable. Therefore, Petitioner bears the burden of proving to the exclusion of fair debate that the challenged plan amendments are not in compliance. This means that "if reasonable persons could differ as to its propriety," a plan amendment must be upheld. Martin Cnty. v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997). Where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the County's decision was anything but 'fairly debatable.'" Martin Cnty. v. Section 28 P'ship, Ltd., 772 So. 2d 616, 621 (Fla. 4th DCA 2000).

47. Aspirational amendments require less data and analyses than might otherwise be required. Indian Trail Improve. Dist. v. Dep't of Cmty. Affairs, 946 So. 2d 640, 641 (Fla. 4th DCA 2007). Therefore, the revisions in Plan Amendment 12-01 which simply express support for a particular vision or strategy and require no immediate action by the County do not need to be supported by the extensive data and analysis suggested by Petitioner. Unless some formal action is taken by the County to

implement these visions, it is unlikely that they create an internal inconsistency with other portions of the Plan.

48. Petitioner has argued that both amendments must comply with sections 163.3177(6) (a), (b), and (f), which require that each comprehensive plan contain a Future Land Use, Transportation, and Housing Element, respectively, and describe the content of each. While the Transportation Element has been revised by Plan Amendment 12-03, and its requirements must be considered for that amendment, the other elements have not been amended. Even so, Petitioner contends that the KOCP, a part of an optional element, is controlling over the more generic provisions of the mandatory Future Land Use and Housing Elements, and therefore any KOCP amendment must comply with the statutory requirements when adopting FLUE and Housing Element amendments. However, the plain language in the statute provides that these requirements apply only when the local government adopts a FLUE or Housing Element amendment. Petitioner has cited no persuasive authority supporting a contrary interpretation of the law. The argument has been rejected.

49. A well-established principle in a compliance proceeding is that once a plan provision is determined to be in compliance, it cannot be collaterally attacked in a subsequent proceeding. See Schember v. Dep't of Cmty. Affairs, Case No.



00-2066GM at pp. 78-80 (Fla. DOAH July 16, 2001), adopted, Case No. DCA01-GM-167 (Fla. DCA Oct. 31, 2001); Order on Motion, July 2, 2012. Nonetheless, Petitioner argues that he should be allowed to challenge all provisions in the KOCP, including those that were not amended during the update process. To support his argument, Petitioner relies on the case of Department of Community Affairs v. Lee County, Case No. 95-0098GM (Fla. DOAH Jan. 31, 1996), adopted, 1996 Fla. ENV. LEXIS 101 (Fla. Admin. Comm. July 25, 1996). In that case, among other amendments, Lee County proposed the elimination of a 2010 Overlay to the Future Land Use Map, which applied to the entire unincorporated County and served to increase the capacity of the land use map. The Administration Commission concluded, as did the hearing officer in the underlying proceeding, that this constituted a "fundamental revision of the FLUM affecting the entire local government jurisdiction" and required "the examination of the remaining provisions of the [FLUE] for compliance with 9J-5." Id. at \*8. These unusual circumstances are not present here. This case involves revisions to a subpart of an optional element affecting only one of the more than 20 community plans in that element. None of the revisions can be characterized as "fundamental" or "affecting the entire local government jurisdiction." Except for the Lee County case, the state land

planning agency has consistently followed the principle in Schember that pre-existing plan provisions not amended are not subject to review or challenge. The prior rulings on this issue are reaffirmed.

50. The evidence supports a conclusion that Petitioner has failed to prove beyond fair debate that the plan amendments are not in compliance. Therefore, the plan amendments adopted by Ordinance No. 12-01 and 12-03 on May 17, 2012, should be found in compliance.

RECOMMENDATION

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

RECOMMENDED that the Department of Economic Opportunity enter a final order determining that Hillsborough County Plan Amendments 12-01 and 12-03 are in compliance.

DONE AND ENTERED this 22nd day of April, 2013, in Tallahassee, Leon County, Florida.



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D. R. ALEXANDER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of April, 2013.

ENDNOTES

1/ There is no requirement that the Planning Commission take a vote, or conduct a poll, of all of the residents of the community to determine the "consensus" of the community on a particular issue. This is especially true for aspirational amendments, which simply support a vision or idea and require no immediate action by the County. See Conclusion of Law 47, infra.

2/ As to this revision, the Amended Petition does not allege a violation of section 163.3177(2), which requires coordination of, and consistency between, the elements.

3/ Although the phrase "as set out by the adopted Hillsborough County Truck Route Ordinance" is shown in various documents as new text in the paragraph, this language is not new and was a part of the original KOCP. See Respondent's Ex. 1, p. 22.

COPIES FURNISHED:

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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.