STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT KEMP, SYLVIA KEMP, AND
GREGORY SAMMS,

Petitioners,

vs. Case No. 13-0009GM

MIAMI-DADE COUNTY,

Respondent,

and

ROSAL WESTVIEW, LLC,

Intervenor.
_____/

RECOMMENDED ORDER

On May 23 and 24, 2013, a duly-noticed hearing was held in Miami, Florida, before Suzanne Van Wyk, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Frank Wolland, Esquire
Law Office of Frank Wolland
12865 West Dixie Highway, Second Floor
North Miami, Florida 33161

For Respondent: Dennis Alexander Kerbel, Esquire
Lauren Morse, Esquire
Miami-Dade County
111 Northwest 1st Street, Suite 2810
Miami, Florida 33128

For Intervenor: Douglas M. Halsey, Esquire
Sheldon Philp, Esquire
White and Case, LLP
Wachovia Financial Center
200 Biscayne Boulevard, Suite 4900
Miami, Florida 33131

## STATEMENT OF THE ISSUE

Whether the amendment to the Land Use Plan Map of the Miami-Dade County Comprehensive Development Master Plan (CDMP), adopted by Ordinance No. 12-109 on December 4, 2012, is "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes (2011).[1/]

## PRELIMINARY STATEMENT

On January 3, 2013, Petitioner filed with the Division of Administrative Hearings (DOAH) a Petition challenging the Land Use Plan Map Amendment (Plan Amendment or LUP Amendment) adopted by Miami-Dade County Ordinance 12-109. The Plan Amendment changes the land use designation on a 195-acre parcel from Parks and Recreation (approximately 191 acres) and Low-Medium Density Residential (four gross acres) to Industrial and Office (approximately 148 acres) and Business and Office (approximately 48 acres). The amendment was approved with a corresponding Declaration of Restrictions limiting future development of the property.

The case was scheduled for hearing on April 10, 2013, with April 11 and 12 reserved for hearing, if necessary. Rosal

Westview, LLC (Westview), the owner of the property subject to the Plan Amendment, was authorized to intervene in support of the amendment. On April 24, 2013, this case was reassigned to the undersigned. The final hearing was continued to May 20 and 21, 2013, upon Petitioner's unopposed Motion for Continuance due to counsel's family emergency.

On April 28, 2013, Intervenor, Westview, filed a Demand for Expeditious Resolution of the case pursuant to section 163.3184(7), Florida Statutes. The following day, Petitioners' counsel filed a Motion to Withdraw and a request for a 30-day continuance to allow Petitioners to find new counsel. Following a telephonic hearing on the motions, the undersigned denied the request for continuance and granted the Motion to Withdraw.

On May 17, 2013, new counsel for Petitioners filed a Motion for Continuance on Petitioners' behalf. Respondent and Intervenor opposed the Motion. Following a telephonic hearing on the Motion, the parties agreed to re-schedule the hearing to May 23 and 24, 2013, and the undersigned entered an Order Granting Continuance and Re-scheduling Hearing.

The Respondent and Westview jointly submitted a timely Pre-hearing Stipulation on May 16, 2013, and Petitioners submitted a Position Statement on May 22, 2013. At the final hearing, Petitioners testified on their own behalves and presented the

testimony of Henry Iler, accepted as an expert in land use planning, comprehensive planning, community redevelopment, and land development codes. Respondent offered the testimony of Mark Woerner, Assistant Director of Planning within Miami-Dade County's Department of Regulatory and Economic Resources. Mr. Woerner was accepted as an expert in land use planning, comprehensive planning, environmental planning, and transportation planning. Intervenor offered the testimony of Francisco Rojo, its Vice President; and Tom Pelham, accepted as an expert in land use planning, comprehensive planning, zoning, and environmental planning.[2/]

The parties' Joint Exhibits J-1 through J-3, J-7, and J-12 through J-14 were admitted into evidence. Petitioners' Exhibits P-1, P-3, and P-6 through P-8 were admitted into evidence without objection. Petitioners' P-5, Composite P-4, and Composites P-10 and P-11 were admitted over objection. Respondent's Exhibits R-9 through R-11, R-16 through R-17, R-22, and R-23 were also admitted into evidence. The undersigned also took official recognition of the Miami-Dade County Code, chapter 33, Index to Zoning Code.

The four-volume Transcript of the hearing was filed on June 7, 2013. Respondent and Intervenor timely filed a Proposed Recommended Order. Petitioners requested and were granted an extension to file their Proposed Recommended Order by July 1,

2013. The Order Granting Extension of Time allowed Respondent and Intervenor to file a response to Petitioners' Proposed Recommended Order by July 3, 2013. Neither Respondent nor Intervenor filed a response. The parties' Proposed Recommended Orders have been considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

### The Parties

1. Miami-Dade County (the County) is a political subdivision of the State of Florida with the duty and responsibility to adopt and maintain a comprehensive growth management plan pursuant to section 163.3167, Florida Statutes. The County adopted the challenged Plan Amendment under the expedited State-review process codified in section 163.3184(3), Florida Statutes.

2. Petitioners Robert and Sylvia Kemp own property and reside at 11021 East Golf Drive, Miami, Florida. The Kemps submitted oral or written comments concerning the Plan Amendment to the County at the transmittal hearing.

3. Petitioner Gregory Samms owns property and resides at 11200 West Golf Drive, Miami, Florida, and submitted oral and written comments concerning the Plan Amendment to the County during the transmittal hearing.

4. Intervenor, Westview, is the owner of the property which is the subject of the challenged Plan Amendment. Westview, through its counsel, submitted comments in support of the amendment at the various public hearings.

The Subject Property

5. The property subject to the Plan Amendment is the site of the former Westview Country Club, a private club, with golf course, which is now closed (Property). The Property is approximately 196 gross acres, and is currently designated on the Land Use Plan Map (LUP Map) as Parks and Recreation (191.6 gross acres) and Low-Medium Residential (4.4 gross acres). It is currently zoned for residential development, mostly single-family, although there is some frontage along Northwest 119th Street zoned for limited business.

6. The Property is curvilinear and approximately one-quarter mile wide. The site is mostly vacant, the former clubhouse having been demolished, although two maintenance buildings and a single-family home remain on the Property. There is a continuous vegetative buffer along the boundary of the Property.

7. Under the existing future land use designation and zoning category, the Property could be developed at a maximum of 1,736 single- and multi-family residential units.

8. The Property is surrounded on all sides by a residential neighborhood, generally known as Westview, in which Petitioners reside. Westview is an older, established community, consisting mostly of single-family residences with some multi-family development on the western edge. East and West Golf Drive, both local roads, surround the property boundary, providing internal access within the Westview neighborhood.

9. The Property, as well as the surrounding neighborhood, is bisected north to south by Northwest 119th Street (also known as Gratigny Parkway), a major east-west arterial providing access to other regional corridors such as State Road 826/Palmetto Expressway to the west and Interstate 95 to the east.

10. Beyond the immediately adjacent residential neighborhood, the Property is bounded by Northwest 22nd Avenue on the east and Northwest 27th Avenue on the west; and by Northwest 107th Street on the south and Northwest 134th Street on the north.

11. To the west, across Northwest 27th Avenue, is the Miami-Dade County Community College North Campus, an institutional use, and a concentration of industrial uses known as the Northwest 27th-37th Avenue Industrial Corridor. East of 22nd Avenue is mostly low-density residential development, with pockets of low-medium residential development and a business-and-office corridor on either side of Northwest 119th Street.

Development to the south is a mix of single- and multi-family residential.

12. The future land use designations of the surrounding properties are institutional and industrial to the west, medium-density residential to the south, low- and medium-density to the east (with a business-and-office corridor along Northwest 119th Street), and low-density residential to the north.

13. The Property is located inside the County's Urban Growth Boundary (UGB), outside of which development is strictly limited in order to protect environmentally sensitive and agricultural lands, as well as limestone mining activities. The County only accepts proposals to change the UGB every two years and requires a supermajority vote of the County Commission to approve a change.

14. The Property is also located within the Urban Infill Area (UIA), the major urban core of the County. The UIA boundary follows Interstate 95 from the northern County line, goes west along the Palmetto Expressway, and south along the Palmetto to 77th Street. The CDMP encourages development and redevelopment within the UIA, prioritizing development on sites within the UIA over sites outside the UIA.

The Amendment

15. Ordinance No. 12-109 changes the future land use designation of approximately 148 acres of the Property to

Industrial and Office, and the remaining 47 acres to Business and Office (Plan Amendment).

16. The owner of the Property plans to develop or cause to be developed on the Property the Westview Business Park, with a mix of Office and Industrial uses.

17. Under the proposed land use designations, without any additional restrictions, the Property could be developed at an intensity of up to 3,012,174 square feet of industrial use on the Properties designated for Industrial and Office, and 733,550 square feet of retail use or 2,886 multi-family residential units on the areas designated Business and Office.

18. In this case, the Plan Amendment has been adopted with a binding Declaration of Restrictions. These development restrictions are incorporated as text into the CDMP Land Use Element Restrictions Table. The Declaration restricts development of the Property as follows:

a) Limits Industrial development to 1.6 million square feet of light industrial, warehouse, and flex space, and further limits warehouse/distribution space to no more than 700,000 square feet.

b) Limits Business and Office development to a maximum of 400,000 square feet of retail and service uses.

c) Limits Residential development to areas designated for Business and Office use, and a maximum of 2,000 units.

d) Limits total site development to generation of a maximum of 3,297 net external PM peak-hour vehicle trips.

e) Ensures development of a mix of uses by limiting construction of Industrial and Office to no more than 800,000 square feet prior to issuance of the first Certificate of Occupancy within the Business and Office parcels.

f) Prohibits the re-zoning of the Industrially-designated portions to the IU-3 zoning district and development of any use allowed in the IU-3 Industrial zoning district.

g) Prohibits all uses allowed in the IU-2 zoning district, except that storage and distribution of cement and clay products is allowed.

h) Prohibits most uses allowed in the IU-1 zoning district.

i) Requires the developer to improve the existing vegetative buffer between the Property and East and West Golf Drive to a sixty-foot landscaped buffer including a seven-foot masonry wall, opaque fence, or berm, with trees planted at a minimum height of 12 to 14 feet and not farther than twenty-five feet on center.

j) Limits vehicular access to the Property exclusively from Northwest 119th Street, except that the Industrial and Office portions will have one access directly from Northwest 22nd Avenue.[3/]

k) Prohibits direct vehicular access between the Property and the surrounding residential neighborhood.

l) Limits height of any hotel or motel use to 50 feet.

m) Commits the developer to work with the Florida Department of Transportation, Miami-Dade County, and the Miami-Dade County Expressway Authority to make improvements on Northwest 119th Street, including extension of an existing westbound travel lane and construction of an eastbound turn lane.

n) Requires the developer to:

   i. Incorporate Transportation Demand Management (TDM) Strategies, pedestrian access and connectivity in the including Business and Office developments, pedestrian access to transit stops, and construction of transit shelters.

   ii. Direct all lighting away from adjacent residential uses, require sound deadeners for any metal work or welding-related uses, and prohibit outdoor speaker systems within the Industrial and Office designation.

   iii. Dedicate a five-acre parcel for a public recreational facility and develop a multi-purpose jogging, biking, and pedestrian track within the rights of way of East and West Golf Drive.

iv. Offer to dedicate vacant land within the Property for a police substation or similar police use.

v. Work with the Public Works Department and the Golf Park Homeowners' Association to develop traffic calming devices and neighborhood identification signage for the residential neighborhood immediately adjacent to the Property.

vi. Make reasonable efforts to employ applicants who are residents of the zip code in which the Property is located, use local businesses and the local workforce in construction of the Project, utilize minority-owned businesses for construction contracts, and maintain non-discriminatory hiring practices.

19. In addition to establishing binding restrictions on the development of the Property which run with the land, the Restrictions can only be modified by amendment to the CDMP, pursuant to section 163.3184, Florida Statutes, and applicable procedures of the Miami-Dade County Code.

Petitioners' Challenge

20. Petitioners challenge that portion of the Plan Amendment which re-designates approximately 148 acres of the Property from Parks and Recreation to Industrial and Office. Petitioners do not challenge that portion re-designating

approximately 46 acres from Parks and Recreation to Business and Office.

21. Petitioners challenge the Plan Amendment as not "in compliance" on the basis of inconsistency with both the CDMP and the Community Planning Act, part II, chapter 163, Florida Statutes. Petitioners' concerns center on the question of the compatibility between the proposed land use and the existing residential neighborhood.

Compatibility

22. Petitioners maintain that the proposed designation of the Property for Industrial development is inherently incompatible with the adjoining residential use. Petitioners rely on the following two CDMP provisions to support this argument:

> Policy LU-4B.
>
> Uses designated on the LUP map and interpretive text, which generate or cause to generate significant noise, dust, odor, vibration, or truck or rail traffic shall be protected from damaging encroachment by future approval of new incompatible uses such as residential uses.

From the Textual Description of Industrial and Office Category:[4/]

> In general, the typical residential development is incompatible with major industrial concentrations and shall not occur in areas designated as 'Industrial and Office' on the LUP map to avoid conflicts and for health and safety reasons.

23. The cited provisions support a finding that Industrial development is generally incompatible with residential development. That fact was admitted by the County in its Staff Report on the proposed Plan Amendment.

24. Neither of the cited provisions prohibits the Plan Amendment from being approved. Following these policies, the County would be justified in denying an application for new residential development within an area designated for Industrial and Office. It does not follow, however, that the County must deny a plan amendment allowing some industrial development adjacent to residential development.

25. As explained by Intervenor's expert, Thomas Pelham, in a highly-urbanized area like Miami-Dade County's central core, it is unrealistic, if not impossible, to follow a Euclidean zoning approach, where different uses are dispersed and separated from one another. Compatibility in such a concentrated urbanized area must be judged by assessing the potential impacts of the proposed development and determining whether those impacts can be mitigated.

26. "'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." § 163.3164(9), Fla. Stat.

27. Petitioners allege the Plan Amendment is inconsistent with the following group of policies which speak to compatibility among uses in close proximity (emphasis in original):

> **GOAL**
>
> **PROVIDE THE BEST POSSIBLE DISTRIBUTION OF LAND USE AND SERVICES TO MEET THE PHYSICAL, SOCIAL, CULTURAL AND ECONOMIC NEEDS OF THE PRESENT AND FUTURE POPULATIONS IN A TIMELY AND EFFICIENT MANNER THAT WILL MAINTAIN OR IMPROVE THE QUALITY OF THE NATURAL AND MAN-MADE ENVIRONMENT AND AMENITIES, AND PRESERVE MIAMI-DADE COUNTY'S UNIQUE AGRICULTURAL HERITAGE.**
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> * * *
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> **Objective LU-4**
> **Miami-Dade County shall, by year 2015, reduce the number of land uses, which are inconsistent with the uses designated on the LUP map and interpretive text, or with the character of the surrounding area.**
>
> Policy LU-4A.
>
> When evaluating compatibility among proximate land uses, the County shall consider such factors as noise, lighting, shadows, glare, vibration, odor, runoff, access, traffic, parking, height, bulk, scale or architectural elements, landscaping, hours of operation, buffering, and safety, as applicable.
>
> Policy LU-4C.
>
> Residential neighborhoods shall be protected from intrusion by uses that would disrupt or degrade the health, safety, tranquility, character, and overall welfare of the neighborhood by creating such impacts as excessive density, noise, light, glare, odor, vibration, dust or traffic.

Policy LU-4D.

> Uses which are supportive but potentially incompatible shall be permitted on sites within functional neighborhoods, communities or districts only where proper design solutions can and will be used to integrate the compatible and complementary elements and buffer any potentially incompatible elements.

Policy LU-8E.

> 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 proposal, if approved would:
>
> * * *
>
> iii) Be compatible with abutting and nearby land uses and protect the character of established neighborhoods; . . . .

28. Petitioners argue the County cannot find the uses compatible because it did not consider all the possible negative impacts to the existing residential development from the adjoining industrial development, as required by Policy LU-4A, and because the Plan Amendment does not protect the character of the Westview neighborhood, as required by Policies LU-4C, LU-4D, and LU-8E(iii).

29. The Declaration of Restrictions is critical to the County's determination that the uses, as proposed in this application, are compatible. County staff originally identified

LU-4G and LU-8E as policies which “could be impeded” by the Plan Amendment application. However, the written staff analysis was not amended after the Declaration of Restrictions was finalized. The developer proposed different iterations of the Declaration of Restrictions as the application progressed through the process. The final Restrictions are the most stringent.

30. Mr. Woerner testified that his opinion that the Plan Amendment is compatible is based on the dedication of the final Restrictions.

31. The County considered noise impacts, as evidenced by Restrictions which prohibit outdoor speaker systems, require sound deadeners for metal work uses, and require that all air compressors be of radial (silenced) design. Further, the Restrictions require the developer to submit a site plan at re-zoning which incorporates noise-reduction techniques, such as traffic calming devices and wing walls surrounding loading bays.

32. Petitioners complain that these Restrictions are meaningless because they contain no measurable standard, such as a maximum decibel level. However, Petitioner offered no evidence that a prohibition on outdoor speaker systems, sound deadeners, and radial (silenced) design of air compressors were meaningless or unenforceable standards.

33. Lighting is addressed in the Restrictions, which require lighting to be directed away from the adjoining

residential areas. Petitioners complain that the Restriction is meaningless because it contains no measurable standard, such as maximum lumens or brightness. However, Mr. Woerner testified that the Restriction gives direction to the County staff at site plan review to ensure that appropriate lighting is incorporated.

34. The Restrictions also evidence the County's consideration of traffic issues by limiting access to the Industrially-designated areas via two access points –- one on Northwest 119th Street and one from 22nd Avenue –- both of which are major arterial roadways. Further, the Restrictions require the developer to construct eastbound right-turn lanes and an extension to the existing fourth westbound travel lane on Northwest 119th Street to serve the Property. Finally, the Restrictions prohibit all internal traffic access between the proposed development and the residential neighborhood.

35. The County conducted a traffic study and evaluated a traffic study submitted by the applicant in this case. The studies form the basis for many of the access and traffic provisions incorporated into the Restrictions.

36. Buffering is directly incorporated into the Restrictions, which require a 60-foot landscaped buffer between the residential property and the proposed development, as more particularly described above. The landscape plan for the buffer area must be submitted to the surrounding property owners for

review and comment prior to the public hearing on the re-zoning application for the Property.

37. In addition to the landscaping plan for the buffer area, landscaping is further addressed in the Restrictions, which require street trees of at least 12 feet along all roadways abutting the Property at a spacing of 25 feet on center.

38. Runoff is addressed in the Restrictions by requiring the developer to obtain a conceptual surface water permit from the County prior to issuance of any building permit for the Property.

39. Petitioners fault the County for excluding from the Restrictions maximum height limits for warehouse and other industrial uses, while including a height limit for hotel and motel development. However, the County and Intervenor offered uncontroverted evidence that the County's zoning code contains height limitations which will govern the industrial development. In the Restrictions, the height of hotel and motel development is limited beyond any regulation in the County's zoning code.

40. Petitioners likewise fault the County for not specifically including provisions addressing odor, vibration, and other potential negative impacts on the residential area as anticipated in Policy LU-4A.

41. The best evidence that the County considered the myriad impacts from industrial development on the neighboring

residential areas is the prohibition of the majority of typically allowable industrial uses.

42. The Restrictions prohibit all uses allowed in the IU-3 Industrial Unlimited zoning district.

43. Further, the Restrictions prohibit the following uses allowed in IU-2, the Industrial Heavy Manufacturing zoning district:

> Asphalt drum mixing plants which produce less than one hundred fifty (150) tons per hour in self-contained drum mixers.
>
> Rock and sand yards.
>
> Manufacturing of cement and clay products, such as concrete blocks, pipe, etc.
>
> Soap manufacturing, vegetable byproducts, only.
>
> Railroad shops.
>
> Sawmills.
>
> Petroleum products storage tanks.
>
> Dynamite storage.
>
> Construction debris materials recovery transfer facility.

44. Finally, the Restrictions also prohibit most of the 90 uses allowed in IU-1, the Industrial Light Manufacturing zoning district.[5/]

45. Eliminating the uses prohibited by the Restrictions, the Property may be developed for the following uses:

auditoriums, automobile rentals/storage and wholesale distribution, bakeries (wholesale only), banks, bottling plants, caterers, cold storage warehouses and pre-cooling plants, contractors' offices (not yards), engine sales, food storage warehouse, hotel and motel, laboratories, leather goods manufacturing (except tanning), locksmiths, office buildings, pharmaceutical storage (subject to conditions), police and fire stations, post offices, radio and television transmitting stations and studios, restaurants, salesrooms and storage show rooms (retail subject to limitations), schools for aviation and electronic trades, physical training schools such as gymnastics and karate, ship chandlers, telecommunications hubs (subject to conditions), telephone exchanges, vending machine sales and service, truck and bus stations and terminals, as well as the storage and wholesale distribution of concrete, clay or ceramic products, and novelty works.

46. By prohibiting the myriad uses typically allowed within an Industrially-designated area, the Restrictions eliminate the sights, sounds, odors, vibrations, glare and other potential adverse impacts associated with those uses.

47. The Restrictions protect the neighborhood from noise, light, glare, odor, vibration, dust and traffic, as required by Policy LU-4C.

48. A preponderance of the evidence supports a finding that the County considered the proximity of the neighborhood to the proposed Industrial and Office designation, and approved the designation only with severe limitations on allowable uses and with restrictions designed to mitigate negative impacts and protect the health, safety, and character of the adjoining neighborhood. The Restrictions are designed to buffer the neighborhood from potentially incompatible elements of the adjoining industrial uses, as required by Policy LU-4D.

49. Neighborhood safety and quality of life are additionally addressed by specific provisions of the Restrictions. The developer is required to construct a multi-purpose jogging, bicycle, and pedestrian track along the perimeter of the property; offer to dedicate and improve a 5-acre public recreational facility; and offer to dedicate property for a police substation or similar police use. Further, the developer is required to include pedestrian access improvements across Northwest 119th Street between the Business and Office parcels. These improvements are designed to increase pedestrian access between the two sections of the neighborhood currently divided by Gratigny Parkway.

50. Petitioners cite to the following additional provisions in support of their argument that the Plan Amendment is inconsistent with the CDMP:

Policy LU-5B.

All development orders authorizing new land use or development, or redevelopment, or significant expansion of an existing use shall be contingent upon an affirmative finding that the development or use conforms to, and is consistent with the goals, objectives and policies of the CDMP including the adopted LUP map and accompanying 'Interpretation of the Land Use Plan Map'.

**Objective LU-8**

**Miami-Dade County shall maintain a process for periodic amendment to the Land Use Plan map consistent with the adopted Goals, Objectives and Policies of this plan, which will provide that the Land Use Plan Map accommodates projected countywide growth.**

Policy LU-8A.

Miami-Dade County shall strive to accommodate residential development in suitable locations and densities which reflect such factors as recent trends in location and design of residential units; a variety of affordable housing options; projected availability of service and infrastructure capacity; proximity and accessibility to employment, commercial and cultural centers; character of existing adjacent or surrounding neighborhoods; avoidance of natural resource degradation; maintenance of quality of life and creation of amenities. Density patterns should reflect the Guidelines for Urban Form contained in this Element.

Policy LU-8D.

The maintenance of internal consistency among all Elements of the CDMP shall be a prime consideration in evaluating all requests for amendment to any Element of the Plan. Among other considerations, the LUP map shall not be amended to provide for additional urban

> expansion unless traffic circulation, mass transit, water, sewer, solid waste, drainage and park and recreation facilities necessary to serve the area are included in the plan and the associated funding programs are demonstrated to be viable.

From the Textual Description of Parks and Recreation Category:

> Unless otherwise restricted, the privately owned land designated as Parks and Recreation may be developed for a use or a density comparable to, and compatible with, surrounding development providing that such development is consistent with the goals, objectives and policies of the CDMP.

51. The cited provisions are wholly inapplicable to the Plan Amendment at issue.

52. Policy LU-5B applies to development orders. The Plan Amendment at issue is not a development order. See § 163.3164(14) through (16), Fla. Stat.

53. Policy LU-8A applies to evaluation of LUP map amendments to accommodate residential development. The Plan Amendment at issue does not designate property for residential use. LU-8A requires the County to follow the Guidelines for Urban Form in evaluating residential designations. While this policy applies to both new and existing residential development, it does not apply to the Plan Amendment at issue.

54. Policy LU-8D speaks to factors for considering urban expansion. The Plan Amendment at issue is urban infill, not urban expansion.

55. The textual description excerpted from the Parks and Recreation category is likewise inapplicable because it limits development on lands designated Parks and Recreational without a change to another land use category. In the case at hand, a map amendment is sought, rendering those limitations inapplicable.

Urban Infill and Economic Development

56. Miami-Dade County maintains that the proposed Plan Amendment is consistent with, and furthers, a number of other CDMP provisions, as follows:

> LU-1C. Miami-Dade County shall give priority to infill development on vacant sites in currently urbanized areas, and redevelopment of substandard or underdeveloped environmentally suitable urban areas contiguous to existing urban development where all necessary urban services and facilities are projected to have capacity to accommodate additional demand.
>
> LU-10A. Miami-Dade County shall facilitate contiguous urban development, infill, redevelopment or substandard or underdeveloped urban areas, high intensity activity centers, mass transit supportive development, and mixed-use projects to promote energy conservation.
>
> LU-12. Miami-Dade County shall take specific measures to promote infill development that are located in the Urban Infill Area as defined in Policy TC-1B or in a built-up area with urban services that is situated in a

> Community Development Block Grant-eligible area, a Targeted Urban Area identified in the Urban Economic Revitalization Plan for Targeted Urban Areas, an Enterprises Zone established pursuant to state law or in the designated Empowerment Zone established pursuant to federal law.[6/]

57. The proposed use of the Property is for infill development and redevelopment of an underdeveloped parcel in a highly urbanized area.

58. Petitioners' expert, Mr. Henry Iler, questioned whether the proposed use of the Property is infill development. He argues that urban infill is traditionally higher-density residential on small vacant sites within urban areas, explaining that "Infill development a lot of times are quarter acre parcels or it could be an acre inside of some development."[7/] Mr. Iler's argument is not persuasive because it is the location of the development, rather than its size or use, that defines it as urban infill.

59. The Property represents a unique, if not unprecedented, opportunity in Miami-Dade County –- almost 200 acres of vacant land within the UIA, with ready access to major transportation corridors for moving goods throughout Florida and beyond.

60. County staff estimates the project would create 2,000 direct jobs and up to 3,500 direct and indirect jobs combined. Industrially-zoned property within the minor statistical area (MSA) in which the Property is located, along with the

closest adjacent MSA, is projected to be depleted by the year 2017. The designation of the Property for Industrial would add over nine years' supply of Industrial land within the two combined MSAs.

61. The Plan Amendment includes a functional mix of land uses, and the Restrictions ensure that a mix of uses actually develops.

62. The Property is located within a quarter-mile of a future rapid transit corridor, and partly within the North Central Urban Community Center, which is planned for intensified mixed-use development along the Northwest 27th Avenue and Northwest 119th Street transit corridors. The site is currently served by three Metrobus routes, one of which is programmed for improvements in 2012. The Restrictions require the developer to improve existing transit stops along Northwest 119th Street.

63. As summarized by Mr. Pelham, the Plan Amendment fits Policy LU-10A "like a glove."

Concepts

64. The CDMP Future Land Use Element contains a list of 14 long-standing concepts which are embodied in the CDMP. Mr. Woerner testified that the Plan Amendment is consistent with a number of those concepts, including:

> 8. Rejuvenate decayed areas by promoting redevelopment, rehabilitation, infilling and

> the development of activity centers containing a mixture of land uses.
>
> 9. Promote development of concentrated activity centers of different sizes and character to provide economies of scale and efficiencies of transportation and other services for both public and private sectors.
>
> 11. Allocate suitable and sufficient sites for industrial and business districts to accommodate future employment needs.
>
> 13. Avoid excessive scattering of industrial or commercial employment locations.

65. Mr. Woerner testified that the Plan Amendment furthers concept 8 by encouraging infill and a mix of land uses, furthers concepts 9 and 13 by its location in relation to the nearby Northwest 27th-37th Avenue Industrial Corridor and access to major transportation routes, and furthers concept 11 by fulfilling the need for industrial land in the two adjoining MSAs.

66. Petitioners counter with concept 7, “Preserve sound and stable residential neighborhoods,” arguing that the Plan Amendment is contrary to this long-standing concept. Mr. Woerner testified that the Plan Amendment protects the Westview neighborhood through the extensive Restrictions, eliminating myriad uses otherwise allowed in Industrially-designated areas and requiring mitigation of anticipated negative impacts.

67. Petitioners maintain that the Restrictions do not afford the neighborhood the protection required under

the CDMP because the Restrictions are not binding, or otherwise enforceable, and can be changed in the future by the County Commission.

68. Petitioners' argument is not well-taken. The competent substantial evidence supports a finding that the Declaration of Restrictions is incorporated into the Future Land Use Element of the CDMP and can only be changed pursuant to the public notice and hearing provisions of the County ordinances and the Community Planning Act. If, as Petitioners speculate, the owner seeks to permit an IU-3 use on the Property in the future, it will require a future Plan Amendment to revise the Declaration of Restrictions as if it were another land use amendment. Further, such amendment is subject to a super-majority vote of the County Commission.

Summary

69. Petitioners failed to establish beyond fair debate that the challenged Plan Amendment is not in compliance.

## CONCLUSIONS OF LAW

70. The Division of Administrative Hearings has jurisdiction over the subject matter and parties hereto pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes.

71. To have standing to challenge or support a plan amendment, a person must be an affected person as defined in

section 163.3184(1)(a). Both Petitioners and Westview are affected persons within the meaning of the statute.

72. Plan amendments adopted under the expedited state review process do not receive an ORC report or a notice of intent from the state land planning agency. See § 163.3184(3), Fla. Stat. Instead, proposed plan amendments are sent directly to reviewing agencies who have 30 days to send comments within their respective areas of expertise back to the local government. In this case, no evidence was introduced regarding any adverse comments by any reviewing agency. Within 30 days after the adoption process is concluded, an affected person may challenge the plan amendment by filing a petition directly with DOAH. See § 163.3184(5)(a), Fla. Stat. A hearing is then conducted to determine "whether the plan or plan amendments are in compliance as defined in paragraph [163.3184](1)(b)." Id.

73. "In compliance" means "consistent with the requirements of §§ 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.

74. The "fairly debatable" standard, which provides deference to the local government's disputed decision, applies to any challenge filed by an affected person. Therefore,

Petitioners bear the burden of proving beyond fair debate that the challenged Plan Amendment is 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). Or, 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).

75. The standard of proof to establish a finding of fact is preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

76. The elements of a comprehensive plan must be internally consistent. See § 163.3177(2), Fla. Stat. Of particular importance in this case, the Act provides that “Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements, and each such map must be contained within the comprehensive plan.” Id.

77. Although Petitioners alleged that the Plan Amendment re-designating the subject Property to Industrial and Office use creates an internal inconsistency, they failed to prove that allegation beyond fair debate. Petitioners did not prove beyond fair debate that the Plan Amendment violated CDMP policies to protect sound and stable residential neighborhoods. And, while Petitioners did show that additional Restrictions might make the

Plan Amendment more compatible with the adjoining land uses, they did not show that it was not fairly debatable that the Plan Amendment is compatible with the adjacent land uses.

78. The Future Land Use Element of a local comprehensive plan shall provide for the compatibility of adjacent land uses. See § 163.3177(6)(a)3.g., Fla. Stat. This provision is not relevant to a determination of whether the specific Plan Amendment is "in compliance." Petitioner failed to show that the CDMP did not provide for compatibility of adjacent uses.

79. Finally, the Act requires that the amount of land designated for future planned uses provide a balance of uses to foster vibrant, viable communities and economic development opportunities. See § 163.3177(6)(a)4., Fla. Stat. Petitioners failed to demonstrate that the CDMP LUP, as amended, is not consistent with this provision. On the contrary, the preponderance of the evidence supports the conclusion that the LUP map, as amended by the Plan Amendment, provides for a balance of uses and economic development opportunities.

80. In summary, Petitioners failed to prove beyond fair debate that the Plan Amendment adopted on December 4, 2012, by Ordinance No. 12-109 is not 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 the Miami-Dade County Plan Amendment adopted by Ordinance No. 12-109 on December 4, 2012, is in compliance.

DONE AND ENTERED this 1st day of August, 2013, in Tallahassee, Leon County, Florida.

SUZANNE VAN WYK
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 1st day of August, 2013.

## ENDNOTES

[1/] All references herein to the Florida Statutes are to the 2012 version, unless otherwise noted.

[2/] The parties also stipulated that Mr. Iler, Mr. Woerner, and Mr. Pelham were experts in the CDMP amendment process, but the undersigned does not recognize that as an appropriate field of expertise. Further, the parties stipulated that Mr. Woerner and Mr. Pelham were experts in the CDMP, which the undersigned does not recognize as an appropriate area of expertise. Finally,

Intervenor also offered Mr. Pelham as an expert in the field of growth planning, although the parties did not offer any testimony to distinguish that area from either land use planning or comprehensive planning.

[3/] Additional access is allowed, if required by the Miami-Dade County Fire Rescue, Police, and/or Public Works.

[4/] Pursuant to Policy LU-5A, textual descriptions are adopted policy of the CDMP:

> The textual material titled 'Interpretation of the Land Use Plan Map' contained in this Element establishes standards for allowable land uses, and densities or intensities of use for each land use category identified on the adopted land Use Plan (LUP) map, and is declared to be an integral part of these adopted Land Use Policies.

[5/] The following IU-1 uses are prohibited:

(2) Adult entertainment uses as defined in Section 33-259.1.

(3) Aircraft hangars and repair shops, aircraft assembling and manufacturing.

(4) Animal hospitals within soundproof, air-conditioned buildings.

(5) Armories, arsenals.

(7) Auto painting, top and body work.

(7.2) Automobile self-service gas stations.

(7.3) Automobile service stations.

(8) Automobile and truck sales for new and/or used vehicles.

(9) Automotive repairs.

(13) Blacksmith, gas steam fitting shops.

(14) Boat or yacht repairing or overhauling, or boat building.

(15) Boat slips used for the tying up of boats for the purpose of overhauling or repairing.

(17) Brewery.

(18) Cabinet shops.

(19) Canning factories.

(20) Carpet cleaning.

(22) Clubs, private.

(24) Commercial chicken hatcheries.

(25) Manufacturing concrete, clay or ceramic products.

(26) Contractors' yards.

(27) Day nursery, kindergarten, schools and after school care.

(27.1) Dog kennels.

(28) Dredging base or place where dredging supplies are kept and where dredges or boats or machinery are stored, repaired or rebuilt.

(29) Dry cleaning and dyeing plants.

(29.1) Electric substation.

(30) Engine service (gas, oil, steam, etc.).

(31) Fertilizer storage.

(33) Fruit packing and fruit preserving.

(34) Furniture manufacturing.

(35) Furniture refinishing.

(36) Garages—storage mechanical, including trucks, buses, heavy equipment.

(37) Glass installations.

(38) Grinding shops.

(40) Ice manufacturing.

(41) Insecticide, mixing, packaging and storage.

(44) Livery stables, for riding clubs, or a stable for sheltering horses.

(46) Lumberyards.

(47) Machine shops.

(48) Marine warehouses.

(49) Mattress manufacturing and renovating.

(50) Metalizing processes.

(51) Milk or ice distributing station from which extensive truck or wagon deliveries are customarily made.

(52) Millwork shops.

(54) Novelty works manufacturing.

(56) Ornamental metal workshops.

(57) Oxygen storage and filling of cylinders.

(58) Parking lots—commercial and noncommercial.

(59) Passenger and freight—stations and terminals—boats and railroads.

(63) Power or steam laundries.

(64) Printing shops.

(66) Religious facilities.

(70) School—technical trade schools for mechanics.

(72) Shipyards and dry docks.

(73) Sign painting shops.

(74) Steel fabrication.

(75) Storage warehouse for fodder.

(76) Taxidermy.

(79) Telephone service unit yards.

(80) Textile, hosiery and weaving mills.

(81) Upholstery shops.

(82) Utility work centers—power and telephone, etc.

(84) Veterinarians.

(85) Vulcanizing.

(88) Welding shops.

(89) Welding supplies.

(89.1) Plant nurseries.

(90) Wood and coal yards.

(91) The operation of an equipment and appliance center for the testing, repairing, overhauling and reconditioning of any and all equipment, appliances, and machinery sold by the operator/occupant.

[6/] Miami-Dade County highlighted additional policies in its Staff Report, but the undersigned finds these to be the most applicable.

[7/] T.215:22-24.

COPIES FURNISHED:

Dennis Alexander Kerbel, Esquire
Miami-Dade County
111 Northwest 1st Street, Suite 2810
Miami, Florida 33128

Douglas M. Halsey, Esquire
White and Case, LLP
Wachovia Financial Center
200 South Biscayne Boulevard, Suite 4900
Miami, Florida 33131

Frank Wolland, Esquire
Law Office of Frank Wolland
12865 West Dixie Highway, Second Floor
North Miami, Florida 33161

Robert N. Sechen, General Counsel
Department of Economic Opportunity
Caldwell Building, MSC 110
107 East Madison Street
Tallahassee, Florida 32399-4128

Jesse Panuccio, Executive Director
Department of Economic Opportunity
Caldwell Building
107 East Madison Street
Tallahassee, Florida 32399-4128

## NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.