FINAL ORDER NO. AC-15-002

STATE OF FLORIDA
ADMINISTRATION COMMISSION

KATIE PIEROLA and GREG GERALDSON,
Petitioners,

v.

AC Case No. ACC-14-001
DOAH Case No. 14-0940GM

MANATEE COUNTY,
Respondent,

and

ROBINSON FARMS, INC.,
Intervenor.
_____/

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Administration Commission ("Commission"), on March 24, 2015, for consideration of the Recommended Order entered pursuant to section 163.3184, Florida Statutes (2014)[1], in the Division of Administrative Hearings ("DOAH"), Case No. 14-0940-GM ("Recommended Order"). This proceeding followed a challenge filed pursuant to section 163.3184(6)(e), Florida Statutes, to a comprehensive plan amendment adopted pursuant to a compliance agreement by the Manatee County Board of County Commissioners ("County") on December 5, 2013. After receipt of the Recommended Order from DOAH, the Commission is charged with taking final agency action

[1] All citations to Florida Statutes will be to the 2014 edition, unless otherwise noted.

regarding whether the comprehensive plan amendment is "in compliance."[2] Fla. Stat. §163.3184(5)(d).

BACKGROUND

On December 5, 2013, the County adopted Ordinance Number 13-10 ("Plan Amendment") pursuant to a compliance agreement entered between Manatee County ("Respondent") and Robinson Farms, Inc. ("Intervenor"). The Plan Amendment amends the Future Land Use Map of the Manatee County Comprehensive Plan ("Manatee Plan") to change the future land use classification of approximately 20 acres of land owned by Intervenor from Residential-1 (authorizing one dwelling unit per acre) to Residential-3 (authorizing three dwelling units per acre). The Plan Amendment also amends the General Introduction chapter of the Manatee Plan, Section D - Special Plan Interpretation Provisions, to expressly limit the future development to a maximum of 38 residential units on the subject property. The property is located entirely within a designated Coastal Evacuation Area ("CEA").[3] All but 4.68 acres of the property is also located within a designated Coastal High Hazard Area ("CHHA").[4]

---

[2] "'In compliance' means 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." Fla. Stat. §163.3184(1)(b).

[3] The CEA is defined as: "The evacuation Level A for a Category 1 hurricane as established in the regional evacuation study applicable to Manatee County, as updated on a periodic basis." Manatee County Comprehensive Plan, Future Land Use Element Policy 2.2.2.4.1.

[4] The CHHA is defined as: "The geographic area below the Category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model, pursuant to applicable law, as updated on a periodic basis." Manatee County Comprehensive Plan, Future Land Use Element Policy 2.2.2.5.1.

Development within the CEA and CHHA is governed by the Manatee Plan's Coastal Management Element and Future Land Use Element ("FLUE"). Coastal Management Element Objective 4.3.1, entitled "Development Type, Density and Intensity" requires the County to: "Limit development type, density and intensity within the Coastal Planning Area and direct population and development to areas outside of the Coastal High Hazard Area to mitigate the potential negative impacts of natural hazards in this area." Coastal Management Element Policy 4.3.1.1 requires the County to: "Direct population concentrations away from the Coastal Evacuation Area (CEA)."

FLUE Policy 2.2.2.4.5(a), entitled "Development Restrictions/Conditions," prohibits "any amendment to the Future Land Use Map which would result in an increase in allowable residential density on sites within the Coastal Evacuation Area." Similarly, FLUE Policy 2.2.2.5.5(a), entitled "Development Restrictions/Conditions," prohibits "any amendment to the Future Land Use Map which would result in an increase in allowable residential density on sites within the Coastal High Hazard Area Overlay District." In the event of a conflict with other goals, objectives, or policies in the Manatee Plan, the policies associated with the CEA and CHHA shall override those other considerations.[5]

On December 13, 2013, Katie Pierola and Greg Geraldson ("Petitioners") filed a petition with DOAH challenging the Plan Amendment's compliance with Chapter 163,

---

[5] *See* Manatee Comprehensive Plan, Future Land Use Element Policy 2.2.2.4.4(a); *see* Manatee County Comprehensive Plan, Future Land Use Element Policy 2.2.2.5.4(a).

Florida Statutes.[6] Administrative Law Judge Bram D.E. Canter was assigned to conduct the proceedings under DOAH Case Number 14-0940-GM. Respondent and Intervenor filed a motion to dismiss the petition, which was denied. The final hearing in this case was held on May 7, 2014, in Bradenton, Florida. On July 8, 2014, upon consideration of the evidence and post-hearing filings of the Petitioners, Respondent, and Intervenor, the ALJ entered a Recommended Order finding the Plan Amendment not "in compliance," as defined by section 163.3184(1)(b), Florida Statutes.

STANDARD OF REVIEW OF RECOMMENDED ORDER

The Administrative Procedure Act (Chapter 120, Florida Statutes) provides the Commission will adopt the ALJ's Recommended Order, except under certain defined circumstances. The Commission has 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.

Fla. Stat. §120.57(1)(*l*). "Competent substantial evidence" means "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably

[6] Petitioners alleged Ordinance Number 13-10 was not based upon the best available data and analysis, and was inconsistent with Manatee Plan FLUE 2.2.2.4.5(a), Manatee Plan Coastal Element Policy 4.3.1, and Manatee Plan Coastal Element Policy 4.3.1.1. Brief of Petitioners at 4, *Pierola and Geraldson v. Manatee County and Robinson Farms, Inc.*, Case No. 11-0009-GM (DOAH Dec. 13, 2013); *see* Fla. Stat. §163.3177(1)(f) ("All mandatory and optional elements of the comprehensive plan and plan amendments shall be based upon relevant and appropriate data..."); *see* Fla. Stat. §163.3177(2) ("Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent.").

inferred," and evidence that "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).

In reviewing the findings of fact within the Recommended Order, the Commission's consideration is expressly restricted to the record established in the administrative proceedings below. *See Fox v. Treasure Coast Reg'l Planning Council*, 442 So.2d 221, 227 (Fla. 1st DCA 1983) ("[W]hen fact-finding functions have been delegated to a hearing officer, the Commission must rely in its determinations upon the record developed before the hearing officer."). The weight given to conflicting evidence is a matter reserved for the ALJ, as the trier of fact, and may not be reconsidered by the Commission. *See Cenac v. Fla. State Bd. of Accountancy*, 399 So.2d 1013, 1016 (Fla. 1st DCA 1981) ("The hearing officer in an administrative proceeding is the trier of fact, and he or she is privileged to weigh and reject conflicting evidence."). Thus, the Recommended Order is to be afforded great deference because "[i]t is the hearing officer's function 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." *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. 3d DCA 1959)).

The Commission may modify or reject conclusions of law in the Recommended Order over which it has substantive jurisdiction. Fla. Stat. §120.57(1)(*l*). If the Commission modifies or rejects a conclusion of law, it must state with particularity the

reasons for the modification or rejection, and it must also find that its substituted conclusion of law "is as or more reasonable than that which was rejected or modified." *Id.*

The label assigned to a statement in the Recommended Order is not dispositive as to whether it is a finding of fact or a conclusion of law. *See Kinney v. Dep't of State*, 501 So.2d 129, 132 (Fla. 5th DCA 1987) ("Erroneously labeling what is essentially a factual determination a 'conclusion of law,' whether by the hearing officer or the agency does not make it so, and the obligation of the agency to honor the hearing officer's findings of fact may not be avoided by categorizing a contrary finding as a 'conclusion of law.'" (citations omitted)). Therefore, conclusions of law labeled as findings of fact, and vice versa, will be appropriately considered by the Commission based upon the statement itself, and not the label assigned.

SUMMARY OF COMPLIANCE DETERMINATION

The Commission grants the exceptions filed by Respondent and Intervenor, and finds the Plan Amendment is "in compliance," as defined in Chapter 163, Florida Statutes. Florida law provides, a "plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable." Fla. Stat. §163.3184(5)(c)1. "The fairly debatable standard of review is a highly deferential standard requiring 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).

The County reviewed the impact of the Plan Amendment on the entire 1,927-acre coastal area, not the 20-acre Robinson Farms property alone. On nearby sites within the

CEA and CHHA, the County had reduced residential density by more than 500 dwelling units since 2006, and therefore determined the *de minimis* increase authorized by the Plan Amendment on the Robinson Farms property was not inconsistent with the objectives, policies, and goals of the Manatee Plan's several elements on a net basis. The Commission finds this determination of internal consistency and compliance with Chapter 163, Florida Statutes, was fairly debatable, and therefore due deference is owed to the planning action of the County.

The Commission accepts the findings of fact made by the ALJ, which establish the following through competent substantial evidence from the administrative proceedings below: (1) the 20-acre Robinson Farms property is located within the designated CEA (*see* Recommended Order at 4-5, ¶¶5, 8); (2) 15.32 acres of the Robinson Farms property is also located within the designated CHHA (*see* Recommended Order at 4-5, ¶¶5, 11); and (3) the Plan Amendment will increase residential density on the 20-acre Robinson Farms property by amending the Future Land Use Classification of the parcel from RES-1 to RES-3, and authorizing up to 38 residential units to be constructed thereon. *See* Recommended Order at 4-5, ¶¶5, 6, 7.

This Final Order modifies the conclusions of law reached by the ALJ pertaining to the consistency of the Plan Amendment with the objectives, goals, and policies of the Coastal Management Element and the Future Land Use Element, as well as the Plan Amendment's compliance with Chapter 163, Florida Statutes.

RULINGS ON EXCEPTIONS

Florida law establishes explicit requirements for the filing of exceptions to recommended orders issued by DOAH:

> Parties may file exceptions to findings of fact and conclusions of law contained in recommended orders with the agency responsible for rendering final agency action within 15 days of entry of the recommended order except in proceedings conducted pursuant to Section 120.57(3), F.S. Exceptions shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record. Fla. Admin. Code r. 28-106.217(1) (2014).

In issuing its Final Order, the Commission must include an explicit ruling on each properly filed exception, but is not required to rule on an exception that fails to specifically identify the disputed portion of the recommended order, the legal basis for the exception, or the appropriate citations to the record. *See* Fla. Stat. §120.57(1)(k).

On July 23, 2014, Respondent and Intervenor jointly filed timely Exceptions to Recommended Order, as well as an Appendix to Exceptions to Recommended Order. On August 1, 2014, Respondent and Intervenor untimely filed a Supplemental Memorandum of Law in Support of Exceptions to Recommended Order. Petitioners neither filed exceptions to the Recommended Order, nor responses to the exceptions filed by Respondent and Intervenor.

The Commission has reviewed the Recommended Order, the exceptions filed by Respondent and Intervenor, the relevant portions of the record, and appropriate legal authority in issuing its rulings in the following paragraphs. Unless otherwise noted below, all exceptions filed by Respondent and Intervenor satisfy the requirements of Rule 28-106.217(1), F.A.C.

Exception 1

Respondent and Intervenor take exception to Finding of Fact 25 in the Recommended Order. In Finding of Fact 25, with reference to the Plan Amendment's consistency with the Manatee Plan's Coastal Element, the ALJ determined:

> No evidence was presented by Petitioners or by Manatee County on the County's interpretation of the term "population concentrations." However, FLUE Policy 2.2.2.4.5(a) prohibits any increase in residential density in the CEA. Therefore, assuming as we must that the Manatee Plan is internally consistent, it follows that "population concentrations" in Coastal Element Objective 4.3.1[7] and Policy 4.3.1.1[8] means any increase in residential density. Because the 2013 Amendments increase residential density in the CEA, they are inconsistent with this objective and policy.

Respondent and Intervenor challenge the conclusion that FLUE Policy 2.2.2.4.5(a) prohibits any increase in residential density in the CEA, arguing such a determination is contrary to (i) the language of the Manatee Plan; (ii) a fairly debatable interpretation of its plan made by the County; and (iii) the state-mandated mitigation criteria that allows increases in residential density within the CEA and CHHA. The exception further challenges the ALJ's conclusion the Plan Amendment is inconsistent with FLUE Policy 2.2.2.4.5(a), Coastal Element Objective 4.3.1, and Coastal Element Policy 4.3.1.1, because the County reached a fairly debatable determination of internal consistency.

---

[7] "Development Type, Density and Intensity: Limit development type, density and intensity within the Coastal Planning Area and direct population and development to areas outside of the Coastal High Hazard Area to mitigate the potential negative impacts of natural hazards in this area." Manatee Co. Comprehensive Plan, Coastal Element, Objective 4.3.1.

[8] "Direct population concentrations away from the Coastal Evacuation Area (CEA). Implementation Mechanism: (a) Update requirements in the Manatee County Land Development Code consistent with this Comprehensive Plan element." Manatee Co. Comprehensive Plan, Coastal Element, Policy 4.3.1.1.

First, Respondent and Intervenor argue the use of the plural "sites" in FLUE Policy 2.2.2.4.5(a) supports the County's consideration of the impact of the Plan Amendment on the 1,927-acre coastal area of Manatee County *as a whole*, rather than on the affected 20-acre parcel alone. In reviewing the area-wide impact, the County considered past reductions in allowable residential density in the CEA and CHHA dating back to 2006, and determined the Plan Amendment would result in, at most, a *de minimis* increase in allowable residential density within the CHHA. Thus, Respondent and Intervenor assert, the County achieved internal consistency *on a net basis* between the Plan Amendment and FLUE Policy 2.2.2.4.5(a).

Next, Respondent and Intervenor contend, even though the Plan Amendment would increase allowable residential density on a site within the CEA and CHHA, the County determined it had satisfied the mitigation criteria required by the state coastal high hazard provisions of section 163.3178(8)(a), Florida Statutes, to accommodate such an increase. Specifically, the County found the Plan Amendment would only have a *de minimis* impact on hurricane evacuation time to shelter and the emergency shelter capacity within the CEA and CHHA, and so the Plan Amendment must be found in compliance with the state coastal high hazard provisions.[9]

Although labeled as a finding of fact, Paragraph 25 of the Recommended Order is more appropriately treated as a mixed finding of fact and conclusion of law. The ALJ

[9] *See* Fla. Stat. §163.3178(8)(a)2. ("A proposed comprehensive plan amendment shall be found in compliance with state coastal high hazard provisions if: [...] A 12-hour evacuation time to shelter is maintained for a category 5 storm event as measured on the Saffir-Simpson scale and shelter space reasonably expected to accommodate the residents of the development contemplated by a proposed comprehensive plan amendment is available").

first determined the Plan Amendment increases residential density on a site within the CEA and CHHA, based upon the testimony and exhibits received in the proceeding below – a finding of fact – and then evaluated the consistency of that residential density increase with the objectives and policies of the Manatee Plan's Coastal Element – a conclusion of law.

The Commission determines the ALJ's finding of fact that the Plan Amendment would increase residential density in the CEA is supported by competent substantial evidence in the record. Respondent and Intervenor do not challenge this finding, and agree in the written exception to Finding of Fact 25 that Ordinance Number 13-10 would result in an additional 18 units of allowable residential density on the 20-acre Robinson Farms property, which is located within the CEA and CHHA. Therefore, the Commission adopts the ALJ's finding of fact that the Plan Amendment increases residential density on a site within the CEA because it is based upon competent substantial evidence in the record.

However, in evaluating the consistency of the Plan Amendment with the several elements of the Manatee Plan, the County reviewed the impact on more than just the 20-acre Robinson Farms property, looking instead to the entire 1,927-acre coastal area. On the sites comprising the CEA, the County considered past reductions in residential density that have taken place since 2006, and determined the 18-unit addition on the Robinson Farms site was, at most, a *de minimis* increase in overall density. Evaluating the impact of the Plan Amendment on the sites comprising the CEA, in light of prior reductions in density, the County reached a fairly debatable determination of

consistency with the several elements of the Manatee Plan, including Coastal Management Element Objective 4.3.1 and Policy 4.3.1.1. As argued by Respondent and Intervenor, the County's fairly debatable determination in this planning action is owed great deference. *See Martin County v. Yusem*, 690 So.2d at 1295. The Commission finds the County's interpretation of the Manatee Plan to be as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 1 of Respondent and Intervenor to Finding of Fact 25 is GRANTED.

Exception 2

Respondent and Intervenor take exception to Finding of Fact 26 in the Recommended Order. The exception incorporates by reference the analysis set forth in Exception 1 above. In Finding of Fact 26, with reference to the Plan Amendment's consistency with the Manatee Plan's Future Land Use Element, the ALJ determined:

> Because the 2013 Amendments would amend the Future Land Use Map to increase allowable residential density on a site within the CEA they are inconsistent with FLUE Policy 2.2.2.4.5(a), which prohibits any amendment to the Future Land Use Map that would increase allowable residential density on sites within the CEA.

Although labeled as a finding of fact, Paragraph 26 of the Recommended Order is more appropriately treated as a mixed finding of fact and conclusion of law. The ALJ first determined the Plan Amendment increases residential density on a site within the CEA, and then evaluated the consistency of that residential density increase with the objectives and policies of the Manatee Plan's Future Land Use Element for the CEA.

The Commission determines the ALJ's finding of fact that the Plan Amendment would increase residential density in the CEA is supported by competent substantial evidence in the record.

Notwithstanding the increase in residential density on the 20-acre Robinson Farms property, the Commission finds the County reached a fairly debatable determination of consistency with FLUE Policy 2.2.2.4.5(a). As stated in the ruling on Exception 1 above, the County considered the impact of the Plan Amendment on the several sites comprising the 1,927-acre coastal area, accounting for the reductions in residential density that have taken place since 2006. Evaluating the impact of the Plan Amendment on the sites of the CEA, in light of prior reductions in density, the County reached a fairly debatable determination of consistency with the several elements of the Manatee Plan, including FLUE Policy 2.2.2.4.5(a). The Commission finds the County's interpretation of the Manatee Plan to be as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 2 of Respondent and Intervenor to Finding of Fact 26 is GRANTED.

Exception 3

Respondent and Intervenor take exception to Finding of Fact 27 in the Recommended Order. The exception incorporates by reference the analysis set forth in Exception 1. In Finding of Fact 27, with reference to the Plan Amendment's consistency with the Manatee Plan's Future Land Use Element, the ALJ determined:

> Because the 2013 Amendments would amend the Future Land Use Map to increase allowable residential density on a site within the CHHA they are inconsistent with FLUE Policy 2.2.2.5.5(a), which prohibits any amendment to the Future Land Use Map that would increase allowable residential density on sites within the CHHA.

Although labeled as a finding of fact, Paragraph 27 of the Recommended Order is more appropriately treated as a mixed finding of fact and conclusion of law because the ALJ first determined the Plan Amendment increases residential density on a site within the CHHA, and subsequently evaluated the consistency of that residential density increase with objectives and policies of the Manatee Plan's Future Land Use Element.

The Commission determines the ALJ's finding of fact that the Plan Amendment would increase residential density on a site within the CHHA is supported by competent substantial evidence in the record.

Notwithstanding the increase in residential density on the 20-acre Robinson Farms property, the Commission finds the County reached a fairly debatable determination of consistency with FLUE Policy 2.2.2.5.5(a). As stated in the ruling on Exception 1 above, the County considered the impact of the Plan Amendment on the sites comprising the 1,927-acre coastal area, accounting for the reductions in residential density that have taken place since 2006. Evaluating the impact of the Plan Amendment on the several sites of the CHHA, in light of prior reductions in density, the County reached a fairly debatable determination of consistency with the several elements of the Manatee Plan, including FLUE Policy 2.2.2.5.5(a). The Commission finds the County's

interpretation of the Manatee Plan to be as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 3 of Respondent and Intervenor to Finding of Fact 27 is GRANTED.

Exception 4

Respondent and Intervenor take exception to Finding of Fact 29 in the Recommended Order. The exception incorporates by reference the analysis set forth in Exception 1. In Finding of Fact 29,[10] the ALJ concluded the County could not reach a fairly debatable determination of consistency based upon consideration of other policies and factors because of the Plan Amendment's conflict with FLUE Policies 2.2.2.4.5(a) and 2.2.2.5.5(a), which override all other considerations pursuant to FLUE Policies 2.2.2.4.4(a) and 2.2.2.5.4(a). Although labeled as a finding of fact, Paragraph 29 of the Recommended Order is more appropriately treated as a conclusion of law because the ALJ analyzed the consistency of the Plan Amendment with the CEA and CHHA policies.

The Commission finds the County reached a fairly debatable determination of consistency with FLUE Policies 2.2.2.4.5(a) and 2.2.2.5.5(a), as discussed in the preceding rulings on exceptions. Because the County made a fairly debatable determination the Plan Amendment does not conflict with the CEA and CHHA policies, there is no cause to interpret whether the override provisions in FLUE Policies

[10] "Contradicting this argument are FLUE Policy 2.2.2.4.4(a) and FLUE Policy 2.2.2.5.5(a), which state that the CEA and CHHA policies shall override any conflicting goals, objectives, and policies in the Manatee Plan." Recommended Order at 9-10, ¶29.

2.2.2.4.4(a) and 2.2.2.5.4(a) apply. The Commission finds the County's interpretation of the Manatee Plan to be as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 4 of Respondent and Intervenor to Finding of Fact 29 is GRANTED.

Exception 5

Respondent and Intervenor take exception to Finding of Fact 31 in the Recommended Order. The exception properly identifies the disputed portion of the Recommended Order, but does not provide a legal basis for the exception, nor does it provide appropriate and specific citations to the record in support of the exception. Although the Commission is not required to rule on an exception that fails to include the required components above, Exception 5 reiterates the arguments presented in Exception 1, which was properly supported and cited, and so it will be addressed.

In Finding of Fact 31, the ALJ stated:

> Manatee County and Robinson Farms argue that the County's reduction in dwelling units in other parts of the CHHA over the past several years is a valid consideration in determining whether an increase in residential density on the Robinson Farms property is permissible despite the prohibition in FLUE Policy 2.2.2.5.5(a). In support of their argument, they cite Department of Community Affairs v. Leeward Yacht Club, LLC, DOAH Case No. 06-0049GM, 2006 WL 2497934 (Nov. 16, 2006). However, the Leeward Yacht Club case involved the comprehensive plan of Lee County, which did not prohibit increases in residential density in the CHHA.

Although labeled as a finding of fact, Paragraph 31 of the Recommended Order is more appropriately treated as a conclusion of law because the ALJ engaged in legal analysis to interpret the Manatee Plan in light of arguments presented by Respondent

and Intervenor of the considerations relied upon by the County in adopting the Plan Amendment.

The Commission finds the County reached a fairly debatable determination of consistency with FLUE Policies 2.2.2.4.5(a) and 2.2.2.5.5(a), as discussed in the preceding rulings on exceptions. The interpretation of the Manatee Plan put forth by Respondent and Intervenor is as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 5 of Respondent and Intervenor to Finding of Fact 31 is GRANTED.

Exception 6

Respondent and Intervenor take exception to Finding of Fact 32 in the Recommended Order. The exception incorporates by reference the analysis set forth in Exception 1. In Finding of Fact 32,[11] the ALJ concluded the Manatee Plan prohibits any amendment to the Future Land Use Map that would increase residential density in the CHHA. In so ruling, the ALJ disregarded the argument of Respondent and Intervenor that the County could consider prior reductions in residential density when evaluating the Plan Amendment's consistency with the Manatee Plan. Although labeled as a finding of fact, Paragraph 32 of the Recommended Order is more appropriately treated as a conclusion of law, because the ALJ interpreted provisions within the Manatee Plan.

[11] "In contrast, the Manatee Plan quite plainly prohibits 'any amendment' to the Future Land Use Map that would increase residential density in the CHHA." Recommended Order at 10, ¶32.

Respondent and Intervenor argue the increase in residential density on the Robinson Farms property is permissible because the impact is fully mitigated by the prior reductions in density on other sites within the CHHA, in accord with the state coastal high hazard provisions in section 163.3178(8)(a), Florida Statutes. The Commission finds the County reached a fairly debatable determination of consistency with FLUE Policy 2.2.2.5.5(a), as discussed in the preceding rulings on exceptions. The interpretation of the Manatee Plan put forth by Respondent and Intervenor is as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 6 of Respondent and Intervenor to Finding of Fact 32 is GRANTED.

Exception 7

Respondent and Intervenor take exception to Finding of Fact 36 in the Recommended Order. In Finding of Fact 36, the ALJ discussed the procedural history and previous proceedings between the Parties, and noted:

> In Manatee County Ordinance No. 11-035, which was the ordinance used to rescind the 2010 Amendment, the Board of County Commissioners determined that the 2010 Amendment was internally inconsistent with FLUE Policy 2.2.2.4.5(a), Coastal Element Objective 4.3.1, and Coastal Element Policy 4.3.1.1 because the amendment increased residential density in the CEA and CHHA.

Respondent and Intervenor object to the relevance of Finding of Fact 36, noting the prior proceedings dealt with a different comprehensive plan amendment and a different proposed development than the ordinance at issue in this case. Although the ALJ accurately recounts the contents of Manatee County Ordinance Number 11-035, the

Commission agrees with Respondent and Intervenor that its factual foundation is distinguishable from the present case, and its legal relevance is, therefore, dubious. The Commission finds the County reached a fairly debatable determination of consistency of the Plan Amendment with the several elements of the Manatee Plan. The interpretation of the Manatee Plan put forth by Respondent and Intervenor is as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 7 of Respondent and Intervenor to Finding of Fact 36 is GRANTED.

Exception 8

Respondent and Intervenor take exception to Conclusions of Law 58 and 59 in the Recommended Order. The exception incorporates by reference the analysis set forth in Exceptions 1 and 6. In Conclusions of Law 58 and 59, the ALJ denied Petitioners' challenge that the Plan Amendment was not based upon relevant, appropriate data and analysis, and held:

> Petitioners contend that the proposed reclassification of the Robinson Farms property from RES-1 to RES-3 does not react appropriately to the data which show the Robinson Farms property lies within the CEA and CHHA and, therefore, the 2013 Amendments violate section 163.3177(1)(f). However, it is not the mapping of the CEA and CHHA that gives rise to a conflict. If the Manatee Plan already allowed up to two [dwelling units per acre] within the CEA and CHHA, there would be no conflict with the 2013 Amendments. The conflict is created by the policies which prohibit any increase in residential density in the CEA and CHHA.
>
> Generally, conflict with an existing policy will not constitute a failure to react appropriately to data. Otherwise, every instance of internal inconsistency between a proposed amendment and an existing policy would also be a violation of the requirement in section 163.3177(1)(f) that amendments be based on relevant and appropriate data and analysis. It is

> clear in chapter 163 that the requirement for an amendment to be internally consistent and the requirement that it be based on relevant and appropriate data and analysis are intended to be distinct criteria. In this case, there was no dispute about data or the analysis of data.

Respondent and Intervenor argue no conflict exists between the Plan Amendment and the Manatee Plan. The Commission finds the County reached a fairly debatable determination of consistency with FLUE Policies 2.2.2.4.5(a) and 2.2.2.5.5(a), as discussed in the preceding rulings on exceptions. The interpretation of the Manatee Plan put forth by Respondent and Intervenor is as or more reasonable than the conclusion reached by the ALJ regarding the consistency of the Plan Amendment with the Manatee Plan.

Therefore, Exception 8 of Respondent and Intervenor to Conclusions of Law 58 and 59 is GRANTED.

Exception 9

Respondent and Intervenor take exception to Conclusions of Law 61 and 62 in the Recommended Order. The exception incorporates by reference the analysis set forth in Exceptions 1 and 6. In Conclusions of Law 61 and 62, the ALJ held:

> Petitioners proved beyond fair debate that the 2013 Amendments would create internal inconsistency with FLUE Policies 2.2.2.4.5(a) and 2.2.2.5.5(a), Coastal Element Objective 4.3.1, and Coastal Element Policy 4.3.1.1.
>
> The inconsistency is clear. The Manatee Plan prohibits "any amendment" that would increase residential density in the CEA and the CHHA and directs that these prohibitions shall override any other policies that may be in conflict. The inconsistency is not open to dispute or controversy on grounds that make sense or point to a logical deduction.

Respondent and Intervenor reiterate their position that the Plan Amendment does not increase residential density within the CEA and CHHA on a net basis, or, alternatively, that any increase is fully mitigated by prior reductions in residential density in the surrounding area. The Commission finds the County reached a fairly debatable determination of consistency with the several elements of the Manatee Plan, as discussed in the preceding rulings on exceptions. The interpretation of the Manatee Plan put forth by Respondent and Intervenor is as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 9 of Respondent and Intervenor to Conclusions of Law 61 and 62 is GRANTED.

Exception 10

Respondent and Intervenor take exception to Conclusion of Law 63 in the Recommended Order. In Conclusion of Law 63, the ALJ held:

> Manatee County and Robinson Farms assert that the County meets the mitigation criteria described in section 163.3178(8)(a) for a proposed amendment affecting lands in the CHHA. However, section 163.3178(8)(a) addresses state criteria. The 2013 Amendments must also satisfy local criteria in the Manatee Plan. As explained herein, they do not.

Respondent and Intervenor argue the County satisfied the mitigation criteria to offset the impact of the proposed development within the CHHA, as contemplated by section 163.3178(8)(a), Florida Statutes, and reached a fairly debatable determination of consistency between the Plan Amendment and the Manatee Plan. The Commission finds the County reached a fairly debatable determination of consistency with the

several elements of the Manatee Plan, as discussed in the preceding rulings on exceptions. The interpretation of the Manatee Plan put forth by Respondent and Intervenor is as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 10 of Respondent and Intervenor to Conclusion of Law 63 is GRANTED.

Exception 11

Respondent and Intervenor take exception to Conclusion of Law 64 in the Recommended Order. The exception incorporates by reference the analysis set forth in Exceptions 1 through 10. In Conclusion of Law 64, the ALJ held, "Petitioners have proved beyond fair debate that the 2013 Amendments are not in compliance."

The Commission determines the County reached a fairly debatable determination of consistency between the Plan Amendment and the several elements of the Manatee Plan, as discussed in the preceding rulings on exceptions. The "fairly debatable" standard is highly deferential to the determination reached by the County. *See Martin County v. Yusem*, 690 So.2d at 1295. Accounting for prior reductions in residential density on the adjacent areas when evaluating the impact of the proposal on the density of sites within the CEA and CHHA was a reasonable analysis by the County. That the ALJ reached a different conclusion when interpreting the policies of the Manatee Plan does not mean the County's determination was not fairly debatable. Reasonable persons differed in the interpretation of the Manatee Plan, but the County's determination is owed great deference. The Commission finds the County's

interpretation of the Manatee Plan as or more reasonable than the conclusion reached by the ALJ.

Therefore, Exception 11 of Respondent and Intervenor to Conclusion of Law 64 is GRANTED.

CONCLUSION

The Commission hereby adopts the ALJ's findings of fact and conclusions of law in the Recommended Order except as modified herein.

Upon review of the entire record, the Recommended Order, and the exceptions of Respondent and Intervenor, the Commission determines the Plan Amendment adopted by Manatee County Ordinance Number 13-10 is "in compliance."

NOTICE OF RIGHTS

"A party who is adversely affected by final agency action is entitled to judicial review." Fla. Stat. §120.68. Pursuant to Rule 9.110, Florida Rules of Appellate Procedure, judicial review shall be invoked by filing a Notice of Appeal within thirty (30) days of the rendition of the Final Order 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 with the clerk of the appropriate District Court of Appeal, accompanied by the applicable filing fees.

DONE AND ORDERED this 5th day of May, 2015.

Cynthia Kelly

CYNTHIA KELLY, Secretary
Administration Commission

FILED with the Clerk of the Administration Commission this 5th day of May, 2015.

Barbara Lighthy
Clerk, Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following persons by United States mail, electronic transmission, or hand delivery this 5th day of May, 2015.

Clerk, Administration Commission

Honorable Rick Scott
Governor
The Capitol
Tallahassee, Florida 32399

Honorable Pamela Jo Bondi
Attorney General
The Capitol
Tallahassee, Florida 32399

Honorable Jeffrey Atwater
Chief Financial Officer
The Capitol
Tallahassee, Florida 32399

Honorable Adam Putnam
Commissioner of Agriculture
The Capitol
Tallahassee, Florida 32399

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

James A. Minix, Esquire
Sarah A. Schenk, Esquire
Office of the Manatee County Attorney
Post Office Box 1000
Bradenton, Florida 34206

Edward Vogler, II, Esquire
Volgler Ashton, PLLC
2411-A Manatee Avenue West
Bradenton, Florida 34205

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

John P. Heekin, Esquire
Office of the Governor
The Capitol
Tallahassee, Florida 32399

Honorable Robert Cohen
Director and Chief Judge
Division of Administrative Hearings
The DeSoto Building
1260 Apalachee Parkway
Tallahassee, Florida 32399-3060

Honorable Bram D. E. Canter
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1260 Apalachee Parkway
Tallahassee, Florida 32399-3060