

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDWARD RUBEN ANDERSON,

Petitioner,

vs.

Case No. 15-1651GM

CITY OF ST. AUGUSTINE,

Respondent,

and

ST. AUGUSTINE LIGHTHOUSE AND
MUSEUM, INC.,

Intervenor.

_____ /

RECOMMENDED ORDER

The final hearing in this case was heard on May 27, 2015, in St. Augustine, Florida, by Bram D.E. Canter, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward Ruben Anderson, pro se
60 Magnolia Drive
St. Augustine, Florida 32080

For Respondent: Ralf G. Brookes, Esquire
Ralf Brookes Attorney
1217 East Cape Coral Parkway, Suite 107
Cape Coral, Florida 33904

For Intervenor: Sidney F. Ansbacher, Esquire
Upchurch, Bailey and Upchurch, P.A.
780 North Ponce de Leon Boulevard
St. Augustine, Florida 32084

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the City of St. Augustine's proposed amendment to its Comprehensive Plan, adopted via Ordinance 2015-03, is "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes (2014).

PRELIMINARY STATEMENT

On March 9, 2015, the City adopted a small-scale amendment to the Future Land Use Map (FLUM) of the St. Augustine Comprehensive Plan ("Comp Plan"). On March 23, 2015, Edward Anderson filed a petition to challenge the proposed amendment. On April 2, 2015, St. Augustine Lighthouse and Museum, Inc., filed a petition to intervene, which was granted.

At the final hearing, Petitioner testified on his own behalf. Petitioner's Exhibits 1 through 15 were received into evidence. Respondent presented the testimony of David Birchim, City Planning and Building Department Director; and Martha Graham, City Public Works Director. Respondent's Exhibits 1 through 12 were received into evidence. Intervenor presented the testimony of its Executive Director, Kathy Fleming, and Mark Knight. Intervenor's Exhibit 1 was received into evidence. Official recognition was taken of the Comp Plan.

FINDINGS OF FACT

1. Petitioner is an individual who owns property and resides in the City near the property that is the subject of the proposed amendment.

2. Respondent City of St. Augustine is a municipality in St. Johns County, which has adopted a comprehensive plan pursuant to chapter 163, which it amends from time to time.

3. Intervenor St. Augustine Lighthouse and Museum, Inc., is a not-for-profit Florida corporation, which owns approximately 6.5 acres of property located at 100 Red Cox Drive, St. Augustine, upon which the historic St. Augustine Light Station is located.

4. St. Johns County, which previously owned the lighthouse property, conveyed the property to Intervenor in 2014. The lighthouse property was zoned "Government Use" while the County owned the property, which is a zoning category that requires government ownership. When the property was conveyed to Intervenor, it became "non-conforming" because it is now privately owned.

5. Under the City's Land Development Code, additions, modifications, reconstruction, and repairs of non-conforming structures and uses are restricted. These restrictions are an inconvenience and impediment to the periodic reconstructions and

repairs required to maintain and improve the lighthouse tower and its associated historic structures.

6. To remove the non-conforming status of the lighthouse property, Intervenor considered various options for rezoning the property. The best zoning district match was determined to be "Maritime Use" because it included "maritime museum" among the allowed uses. The Maritime Use zoning district is listed as an implementing zoning district under the future land use designation Medium Density Residential Mixed Use in the Comp Plan. Therefore, Intervenor applied for a small-scale (under ten acres) comprehensive plan amendment to amend the FLUM to change the land use designation for the lighthouse property from Recreation/Open Lands to Medium Density Residential Mixed Use.

7. The amendment includes a number of special limitations that restrict the kind of development that can occur on the lighthouse property, including: (a) limiting the use of the property to maritime museum; (b) maximum 20 percent lot coverage; (c) maximum individual building footprint of 7,500 square feet; (d) large building setbacks, including setbacks of up to 190 feet to protect the Maritime Hammock in the southwestern corner of the property and a 120-foot-deep "viewshed" in front of the lighthouse tower; (e) review of any development proposal by the State Historical Preservation Officer (SHPO) and finding of "no adverse effect" by the SHPO as a condition precedent to any City

development approval; and (f) a reverter of title to the County if Intervenor ceases to use the property for historic preservation.

8. Petitioner expressed concern about the number of properties in his neighborhood that are still on septic tanks. However, whether the City should extend its sewer lines to serve Petitioner's property is an issue that is irrelevant to the validity of the proposed amendment.

9. To the extent Petitioner attempted to tie the existing septic tanks to the issue of whether the proposed amendment is consistent with public infrastructure provisions of the Comp Plan, he failed to show an inconsistency. The lighthouse property is already served by the City's wastewater system. Furthermore, the proposed amendment would reduce the uses allowed under the existing land use designation for the lighthouse property, which reduces potential future demand on the wastewater system.

10. Petitioner is also concerned about the lack of sidewalks, "traffic controls," and stormwater management capacity. However, Petitioner did not demonstrate that the proposed amendment increases the need for sidewalks, traffic controls, and stormwater management. The more persuasive evidence shows the opposite, that the proposed amendment and its development restrictions reduce the need. For example, the

proposed amendment eliminates residential densities allowed under the current FLUM designation.

11. There is parking provided on the lighthouse property and visitors to the lighthouse are not allowed to park on adjacent streets. Signage at the lighthouse property directs departing visitors away from Petitioner's neighborhood and the nearby elementary school.

12. As an educational exhibit on the lighthouse property, small traditional wooden boats have been built by volunteer craftsmen using only hand tools. Petitioner contends this is an industrial use, which is not allowed under the proposed land use designation. However, construction by handcraft in this manner is not an industrial activity. It is an appropriate use in conjunction with a maritime museum.

CONCLUSIONS OF LAW

13. Petitioner is a resident of the City and made comments at the adoption hearing for the proposed amendment. Therefore, Petitioner has standing. See § 163.3184(1)(a), Fla. Stat. (2014).

14. Intervenor has standing to intervene in this proceeding because it owns the property affected by the proposed amendment.

15. As the party challenging the proposed amendment, Petitioner has the burden to prove the plan amendment is not "in compliance," as that term is defined in section 163.3184(1)(b).

16. The City's determination that the proposed amendment is in compliance is presumed to be correct and must be sustained if the City's determination of compliance is fairly debatable. See § 163.3184(5)(c)1., Fla. Stat.

17. The term "fairly debatable" is not defined in chapter 163, but in Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997), the Supreme Court of Florida explained "[t]he fairly debatable standard is a highly deferential standard requiring approval of a planning action if a reasonable person could differ as to its propriety."

18. The standard of proof for findings of fact is preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

19. Section 163.3187(4) provides that "[c]omprehensive plans may only be amended in such a way as to preserve the internal consistency of the plan pursuant to s. 163.3177." Petitioner failed to prove that the proposed amendment would cause the Comp Plan to be internally inconsistent.

20. Each amendment to a comprehensive plan must be based on relevant and appropriate data and analysis. See § 163.3177(1)(f), Fla. Stat. To the extent Petitioner intended to claim that the proposed amendment is not based on appropriate data and analysis he failed to prove this claim.

21. The City's determination that the proposed amendment is in compliance is fairly debatable.

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 City of St. Augustine Plan Amendment 2015-03 is in compliance.

DONE AND ENTERED this 16th day of July, 2015, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
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 16th day of July, 2015.

COPIES FURNISHED:

Edward Ruben Anderson
60 Magnolia Drive
St. Augustine, Florida 32080
(eServed)

Ralf G. Brookes, Esquire
Ralf Brookes Attorney
1217 East Cape Coral Parkway, Suite 107
Cape Coral, Florida 33904
(eServed)

Sidney F. Ansbacher, Esquire
Upchurch, Bailey and Upchurch, P.A.
780 North Ponce de Leon Boulevard
St. Augustine, Florida 32084
(eServed)

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

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

Katie Zimmer, Agency Clerk
Department of Economic Opportunity
Caldwell Building
107 East Madison Street
Tallahassee, Florida 32399-4128
(eServed)

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.