FINAL ORDER NO. AC-16-006

STATE OF FLORIDA
ADMINISTRATION COMMISSION

ROGER THORNBERRY,
GEORGETTE LUNDQUIST,
STEVEN BRODKIN,
RUBY DANIELS,
ROSALIE PRESTARRI, and
JAMES GIEDMAN,

Petitioners,

vs.

LEE COUNTY,

Respondent,

and

RH VENTURE II, LLC; RH VENTURE III, LLC;
and GREENPOINTE COMMUNITIES, LLC,

Intervenors.
_____/

AC Case No.:	ACC-15-006
DOAH Case No.:	15-3825GM
DEO File No.:	CPA 14-7ESR

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Administration Commission (Commission), on October 25, 2016, 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. 15-3825GM (Recommended Order). This proceeding followed a challenge filed to a comprehensive plan amendment (Plan

[1] All citations to Florida Statutes will be to the 2014 edition, unless otherwise noted. It should be noted that there have been minimal changes to the relevant portions of Chapter 163, Florida Statutes, since the 2014 edition of Florida Statutes.

Amendment) adopted by the Lee County Board of County Commissioners (Respondent) on June 3, 2015. After receipt of the Recommended Order from DOAH, the Commission is charged with taking final agency action regarding whether the Plan Amendment is "in compliance."[2] § 163.3184(1)(b), Fla. Stat.

BACKGROUND

In 2009, Respondent added Policy 21.1.5 (Policy) to its Community Plan and it reads as follows:

> **POLICY 21.1.5:** One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' [sic] rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after May 15, 2009, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

On June 3, 2015, Respondent adopted the Plan Amendment, which changed the land use designation on 585.6 acres from rural to sub-outlying suburban. Respondent did not make a finding of overriding public necessity after concluding that the Policy did not apply to the Plan Amendment. On July 1, 2015, Roger Thornberry, Georgette Lundquist, Steven Brodkin, Ruby Daniels, Rosalie Prestarri, and James Giedman (Petitioners) filed a Petition with DOAH challenging the Plan Amendment pursuant to Section 163.3184, Florida Statutes. Petitioners alleged that the Plan Amendment is not in compliance with Chapter 163, Florida Statutes, because it is internally inconsistent in violation of Section

[2] "'In compliance' means consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, Fla. Stat., 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.

163.3177(2), Florida Statutes. Specifically, Petitioners argue that Respondent was required and subsequently failed to follow the Policy, which requires a finding of overriding public necessity if it removes lands from the rural lands category. On July 9, 2015, the Administrative Law Judge (ALJ) granted the Petition to Intervene filed by RH Venture II, LLC; RH Venture III, LLC; and GreenPointe Communities, LLC (Intervenors). Petitioners filed an Amended Petition with DOAH on August 3, 2015.

The final hearing was held October 12, 2015. Following the hearing, the ALJ issued her Recommended Order on December 1, 2015, finding that the Plan Amendment was not in compliance with Chapter 163, Florida Statutes. The ALJ determined that the Plan Amendment violated Section 163.3177(2), Florida Statutes, since Respondent failed to make the required finding under the Policy. Both Respondent and Intervenors timely filed exceptions to the Recommended Order. Petitioners filed an untimely Response to Respondent's and Intervenors' Exceptions.

STANDARD OF REVIEW OF RECOMMENDED ORDER

The Administrative Procedure Act (Chapter 120, Florida Statutes) provides that the Commission must 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.

§ 120.57(1)(l), Fla. Stat. "Competent substantial evidence" means "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably 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. § 120.57(1)(l), Fla. Stat. 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 considered the ALJ's Recommended Order, the relevant portions of the record, and the exceptions filed by Respondent and Intervenors. Based on its review, the Commission determines in its Final Order that the ALJ's material findings of fact are supported by competent substantial evidence in the record. The Commission further determines that ALJ's conclusions of law, as modified herein, are a reasonable

application of the law to the facts. As such, the Commission determines that the Plan Amendment is in compliance with Chapter 163, Florida Statutes.

The Commission grants Respondent's Exceptions 3, 4, 7, and 8 in part and modifies the ALJ's conclusions of law. The Commission concludes that Respondent's interpretation of the Policy is fairly debatable. The Commission also grants Respondent's Exception 9 and modifies the ALJ's conclusions of law. The Commission concludes (1) that Petitioners failed to prove beyond fair debate that the Plan Amendment and the Policy are internally inconsistent and (2) that Petitioners failed to show that the Plan Amendment is not in compliance with Chapter 163, Florida Statutes. The Commission has thoroughly reviewed Respondent's remaining exceptions. The Commission determines that each of Respondent's remaining exceptions call for the Commission to reclassify findings of fact as conclusions of law, or to offer conclusions of law that are not as or more reasonable than the ALJ's conclusions of law. Therefore, the Commission respectfully rejects Respondent's Exceptions 1 and 2.

The Commission grants Intervenors' Exceptions 3, 4, 5, and 6 in part and modifies the ALJ's conclusions of law. The Commission concludes that Respondent's interpretation of the Policy is fairly debatable. The Commission also grants Intervenors' Exceptions 7 and 8 and modifies the ALJ's conclusions of law. The Commission concludes (1) that Petitioners failed to prove beyond fair debate that the Plan Amendment and the Policy are internally inconsistent and (2) that Petitioners failed to show that the Plan Amendment is not in compliance with Chapter 163, Florida Statutes. The Commission has thoroughly reviewed Intervenors' Exceptions 1 and 2. The Commission determines

that each of Intervenors' remaining exceptions call for the Commission to reclassify findings of fact as conclusions of law, or to offer conclusions of law that are not as or more reasonable than the ALJ's conclusions of law. Therefore, the Commission respectfully rejects Intervenors' Exceptions 1 and 2.

RULING 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 § 120.57(1)(k), Fla. Stat.

On December 16, 2015, Respondent filed timely exceptions to the Recommended Order. On that same date, Intervenors also filed timely exceptions to the Recommended Order. The Commission has reviewed the Recommended Order, the exceptions filed by Respondent and Intervenors, the relevant portions of the record, and the appropriate legal authority in issuing its rulings in the following paragraphs. Unless otherwise noted

below, all exceptions filed by Respondent and Intervenors satisfy the requirements of Rule 28-106.217(1), Fla. Admin. Code. Petitioners filed an untimely Petitioners' Response to Respondent's and Intervenors' Exceptions. See id. r. 28-106.217(3). Therefore, Petitioners' Response to Respondent's and Intervenors' Exceptions was not considered by the Commission.

RESPONDENT'S EXCEPTIONS

Exception 1: Paragraph 21 - DENIED[3]

Respondent takes exception to Paragraph 21. Respondent first contends that Paragraph 21 should be characterized as a conclusion of law because it involves an interpretation of the Policy.

The findings of fact in Paragraph 21 are supported by competent substantial evidence in the record. As such, the Commission may not modify any findings of fact in Paragraph 21 or reclassify them as conclusions of law. To the extent Paragraph 21 contains a conclusion of law, such conclusion represents a reasonable application of the law to the facts. Therefore, the Commission declines to substitute a different conclusion of law.

For these reasons, Respondent's Exception 1 is DENIED.

Exception 2: Paragraphs 22 - DENIED[4]

[3] The Commission views Paragraphs 21 and 22 as findings of fact only to the extent that they represent the subjective reasoning that the ALJ used in arriving at her interpretation of the Policy. The Commission does not view Paragraphs 21 and 22 as findings of fact as to the objective meaning of the Policy.

[4] See supra note 3.

Respondent takes exception to Paragraph 22. Respondent first contends that Paragraph 22 should be characterized as a conclusion of law because it involves an interpretation of the Policy.

The findings of fact in Paragraph 22 are supported by competent substantial evidence in the record. As such, the Commission may not modify any findings of fact in Paragraph 22 or reclassify them as conclusions of law. To the extent Paragraph 22 contains a conclusion of law, such conclusion represents a reasonable application of the law to the facts. Therefore, the Commission declines to substitute a different conclusion of law.

For these reasons, Respondent's Exception 2 is DENIED.

Exception 3: Paragraphs 33, 34, and 35 - GRANTED IN PART

Respondent takes exception to Paragraphs 33, 34, and 35. Respondent contends that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect. The Commission grants Respondent's Exception 3 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons specified below, the Commission concludes that Respondent's interpretation of the Policy is fairly debatable.

The "fairly debatable" standard applies to any challenge filed by an affected person. Martin Cnty. v. Yusem, 690 So. 2d 1288 (Fla. 1997). Under the "fairly debatable" standard, Petitioners bear the high burden of proving beyond fair debate that the challenged amendment is not in compliance with Chapter 163, Florida Statutes. Id. The fairly debatable standard "is a deferential one that requires affirmance of the local

government's action if reasonable persons could differ as to its propriety." See B & H Travel Corp. v. State, Dep't of Cmty. Affairs, 602 So. 2d 1362, 1365 (Fla. 1st DCA 1992); Envtl Coal. of Fla., Inc. v. Broward Cnty., 586 So.2d 1212, 1215 (Fla. 1st DCA 1991); Machado v. Musgrove, 519 So.2d 629, 632 (Fla. 3d DCA 1987) (en banc), rev. denied, 529 So.2d 694 (Fla. 1988). Therefore, this case turns on whether the Plan Amendment is subject to more than one interpretation, and if so, whether Respondent's interpretation of such Policy is fairly debatable.

In her Recommended Order, the ALJ concluded that Respondent's interpretation of the Policy was not fairly debatable because its language has no doubtful meaning. The ALJ then determined that the Policy required Respondent to make a finding of overriding public necessity, regardless of whether the land is of "rural character and rural land use," any time an amendment removes land from the "rural land use category." The Commission disagrees with this conclusion because the meaning of the language in the Policy is unclear and Respondent's interpretation is fairly debatable.

The Policy provides: "One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' [sic] **rural character and rural land use** where it currently exists. Therefore no land use map amendments to the remaining **rural lands category** will be permitted after May 15, 2002, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners" (emphasis added). Reading it as a whole, the Commission concludes that the wording of the Policy is unclear and is open to least two reasonable interpretations, since the first sentence

refers to "rural character and rural land use," whereas the second sentence only refers to "rural lands category."

One possible interpretation is that the Policy requires a finding of overriding public necessity only if the subject property was of "rural character and rural land use..." and designated in the "rural lands category." This is Respondent's and Intervenors' interpretation of the Policy. Another possible interpretation is that the Policy requires a finding of overriding public necessity any time an amendment removes land from the "rural land use category" regardless of whether the land is of "rural character and rural land use." This is Petitioners' argument. Because the policy is unclear and "reasonable persons could differ" as to the meaning of the language contained in the Policy, Florida law requires that the Commission give Respondent's fairly debatable interpretation deference.[5] See Martin Cnty., 609 So. 2d at 1295.

The Commission hereby strikes Paragraph 35 in its entirety and replaces with the following conclusion of law:

> The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusions of law on the same subject.

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[5] The Commission's ruling on the fairly debatable standard in this case is consistent with its recent ruling in Pierola v. Manatee County., Case No. AC-14-001, Final Order dated May 5, 2014; per curiam aff'd, Geraldson v. Manatee County., Case No. 2D15-2057 (Fla. 2d DCA February 3, 2016).

For these reasons, Respondent's Exception 3 is GRANTED IN PART.

Exception 4: Paragraphs 36 - GRANTED IN PART

Respondent takes exception to Paragraph 36. Respondent contends that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect. The Commission grants Respondent's Exception 4 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and Respondent's interpretation is fairly debatable.

The Commission hereby strikes Paragraph 36 in its entirety and replaces it with the following conclusion of law:

> The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Respondent's Exception 4 is GRANTED IN PART.

Note: Respondent omits Exceptions 5 and 6.

Exception 7: Paragraph 37 - GRANTED IN PART

Respondent takes exception to Paragraph 37. Respondent contends that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect. The Commission grants Respondent's Exception 7 to the extent that it finds that the

language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and Respondent's interpretation is fairly debatable.

The Commission hereby strikes Paragraph 37 in its entirety and replaces it with the following conclusion of law:

> The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Respondent's Exception 7 is GRANTED IN PART.

Exception 8: Paragraph 39 - GRANTED IN PART

Respondent takes exception to Paragraph 39. Respondent contends that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect. The Commission grants Respondent's Exception 8 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and Respondent's interpretation is fairly debatable.

The Commission hereby strikes Paragraph 39 in its entirety and replaces it with the following conclusion of law:

The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Respondent's Exception 8 is GRANTED IN PART.

Exception 9: Paragraphs 40 and 41 - GRANTED

Respondent takes exception to Paragraphs 40 and 41. Respondent contends that the ALJ incorrectly concluded in Paragraph 40 that the language contained in the Policy has no doubtful meaning. The Commission grants Respondent's Exception 9 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and Respondent's interpretation is fairly debatable. The Commission hereby strikes Paragraph 40 in its entirety.

Respondent also contends that the ALJ incorrectly concluded in Paragraph 41 that the Plan Amendment and the Policy are internally inconsistent and is therefore in violation of Section 163.3177(2), Florida Statutes. Because of its earlier conclusion that Respondent's interpretation of the Plan Amendment is fairly debatable, the Commission determines that Petitioners failed to prove beyond fair debate that the Plan Amendment is internally inconsistent and in violation of Section 163.3177(2), Florida Statutes. Thus,

Petitioners failed to prove that the Plan Amendment is not in compliance with Chapter 163, Florida Statutes.

The Commission hereby strikes Paragraph 41 in its entirety and replaces it with the following conclusion of law:

> Petitioners failed to prove beyond fair debate that the Plan Amendment is inconsistent with Section 163.3177(2), Florida Statutes. Therefore, the Plan Amendment is "in compliance" with Chapter 163, Florida Statutes.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Respondent's Exception 9 is GRANTED.

INTERVENORS' EXCEPTIONS

Exception 1: Paragraph 21 - DENIED[6]

Intervenors takes exception to Paragraph 21. Intervenors first contends that Paragraph 21 should be characterized as a conclusion of law because it involves an interpretation of the Policy. Intervenors next argue that the Commission should substitute a different conclusion from the one made by the ALJ.

The findings of fact in Paragraph 21 are supported by competent substantial evidence in the record. As such, the Commission may not modify any findings of fact in Paragraph 21 or reclassify them as conclusions of law. To the extent that Paragraph 21 contains a conclusion of law, such conclusion represents a reasonable application of the

[6] See supra note 3.

law to the facts. Therefore, the Commission declines to substitute a different conclusion of law.

For these reasons, Intervenors' Exception 1 is DENIED.

Exception 2: Paragraph 22 - DENIED[7]

Intervenors take exception to Paragraph 22. Intervenors first contend that Paragraph 22 should be characterized as a conclusion of law because it involves an interpretation of the Policy. Intervenors next argue that the Commission should substitute a different conclusion from the one made by the ALJ.

The findings of fact in Paragraph 22 are supported by competent substantial evidence in the record. As such, the Commission may not modify any findings of fact in Paragraph 22 or reclassify them as conclusions of law. To the extent that Paragraph 22 contains a conclusion of law, such conclusion represents a reasonable application of the law to the facts. Therefore, the Commission declines to substitute a different conclusion of law.

For these reasons, Intervenors' Exception 2 is DENIED.

Exception 3: Paragraph 35 - GRANTED IN PART

Intervenors take exception to Paragraph 35. Intervenors contend that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect. The Commission grants Intervenors' Exception 3 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its

[7] See supra note 3.

ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and thus fairly debatable.

The Commission hereby strikes Paragraph 35 in its entirety and replaces it with the following conclusion of law:

> The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Intervenors' Exception 3 is GRANTED IN PART.

Exception 4: Paragraph 36 - GRANTED IN PART

Intervenors take exception to Paragraph 36. Intervenors contend that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect. The Commission grants Intervenors' Exception 4 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and thus fairly debatable.

The Commission hereby strikes Paragraph 36 in its entirety and replaces it with the following conclusion of law:

> The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Intervenors' Exception 4 is GRANTED IN PART.

Exception 5: Paragraph 37 - GRANTED IN PART

Intervenors take exception to Paragraph 37. Intervenors contend that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect. The Commission grants Intervenors' Exception 5 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and thus fairly debatable.

The Commission hereby strikes Paragraph 37 in its entirety and replaces it with the following conclusion of law:

> The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Intervenors' Exception 5 is GRANTED IN PART.

Exception 6: Paragraph 39 - GRANTED IN PART

Intervenors take exception to Paragraph 39. Intervenors contend that the ALJ's conclusion that the language contained in the Policy has no doubtful meaning is incorrect.

The Commission grants Intervenors' Exception 6 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and thus fairly debatable.

The Commission hereby strikes Paragraph 39 in its entirety and replaces it with the following conclusion of law:

> The meaning of the language contained in the Policy is unclear and thus fairly debatable. Therefore, Respondent should be given deference regarding its interpretation of the Policy.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Intervenors' Exception 6 is GRANTED IN PART.

Exception 7: Paragraph 40 - GRANTED

Intervenors take exception to Paragraph 40. Intervenors contend that the ALJ incorrectly concluded in Paragraph 40 that the language contained in the Policy has no doubtful meaning. The Commission grants Intervenors' Exception 7 to the extent that it finds that the language contained in the Policy is ambiguous on its face. For the reasons stated in its ruling on Respondent's Exception 3, the Commission finds that the language contained in the Policy is susceptible to more than one meaning and thus fairly debatable. The Commission hereby strikes Paragraph 40 in its entirety.

For these reasons, Intervenors' Exception 7 is GRANTED.

Exception 8: Paragraph 41 - GRANTED

Intervenors take exception to Paragraph 41. Intervenors contend that the ALJ incorrectly concluded in Paragraph 41 that the Plan Amendment and the Policy are internally inconsistent and is therefore in violation of Section 163.3177(2), Florida Statutes. For the reasons set forth in its ruling on Respondent's Exception 9, the Commission determines that Petitioners failed to prove that the Plan Amendment is not in compliance with Chapter 163, Florida Statutes.

The Commission hereby strikes Paragraph 41 in its entirety and replaces it with the following conclusion of law:

> Petitioners failed to prove beyond fair debate that the Plan Amendment is inconsistent with Section 163.3177(2), Florida Statutes. Therefore, the Plan Amendment is "in compliance" with Chapter 163, Florida Statutes.

For the reasons outlined above, the Commission specifically finds that the substituted conclusion of law regarding the interpretation of the Policy is as or more reasonable than the ALJ's conclusion of law on the same subject.

For these reasons, Intervenors' Exception 8 is GRANTED.

CONCLUSION

The Commission hereby adopts the ALJ's findings of fact and conclusions of law in the Recommended Order except specifically as modified herein. Upon review of the entire record, the Recommended Order, and the exceptions of Respondent and Intervenors, the Commission determines that the Plan Amendment adopted by Lee County Ordinance Number 15-10 is in compliance with Chapter 163, Florida Statutes.

The Commission further determines that Petitioners' Response to Respondent's and Intervenors' Exceptions is stricken because it was filed untimely.

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 1802, 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 7th day of December, 2016.

Cynthia Kelly

CYNTHIA KELLY, Secretary
Administration Commission

FILED with the Clerk of the Administration Commission this 7th day of December, 2016.

Barbara Leighty

Clerk, Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following persons through United States mail, electronic transmission, or hand delivery this 7th day of December, 2016.

Clerk, Administration Commission

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