

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES ANDERSON,

Petitioner,

vs.

CITY OF ST. PETE BEACH,

Respondent,

Case No. 17-1884GM

and

RIA-BRECKENRIDGE, INC.; RIA-  
CORAL REEF, INC.; RIA-SANDPIPER,  
INC.; RIA-TRADEWINDS, INC.; AND  
RESORT INNS OF AMERICA, INC.,

Intervenors.

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RECOMMENDED ORDER

This matter came before D. R. Alexander, Administrative Law Judge of the Division of Administrative Hearings (DOAH), after a determination was made that no material facts are in dispute.

The parties are represented as follows.

APPEARANCES

For Petitioner: Timothy W. Webber, Esquire  
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St. Petersburg, Florida 33710-8501

For Respondent: Andrew W. J. Dickman, Esquire  
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For Intervenors: Scott A. McLaren, Esquire  
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600 Cleveland Street  
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STATEMENT OF THE ISSUE

The issue is whether the plan amendment adopted by the City of St. Pete Beach (City) by Ordinance No. 2017-03 is in compliance.

PRELIMINARY STATEMENT

On March 24, 2017, Petitioner filed his Petition for Formal Administrative Hearing (Petition) with DOAH alleging that an amendment to the Capital Improvements Element of the City's Comprehensive Plan (Plan) was not in compliance. On May 16, 2017, Intervenors were authorized to participate in this proceeding in support of the challenged amendment.

By Order dated July 7, 2017, the City's Motion for Summary Judgment was treated as a request to relinquish jurisdiction on the ground a dispute of material fact no longer exists. After determining that no material facts were in dispute, on July 13, 2017, an Order Closing File and Relinquishing Jurisdiction to the Department of Economic Opportunity (DEO) was issued. The

only matter not resolved by the Order was a question of law that lies within the DEO's substantive expertise. On August 18, 2017, citing section 163.3184(5)(a)-(c), Florida Statutes, the DEO referred the case back to DOAH stating it had authority only to review a recommended order. By Order dated August 24, 2017, the file was reopened.

The following has been considered in the preparation of this Recommended Order: the pleadings; Ordinance 2016-23, officially recognized by Order dated June 12, 2017; the City's Motion for Summary Judgment, with attachments, and Intervenors' Brief in support thereof; Petitioner's response to the City's Motion to Relinquish Jurisdiction, with attachments; and the parties' Pre-Hearing Stipulation.

#### FINDINGS OF FACT

1. Petitioner owns real property and resides in the City. He submitted written comments to the City during the adoption phase of the amendment.

2. The City is a municipal corporation in Pinellas County and is authorized by chapter 163 to adopt and periodically amend its Plan.

3. Intervenors operate businesses and own real property in the City. They submitted oral comments to the City in support of the amendment during the adoption phase.

4. On February 28, 2017, the City adopted Ordinance 2017-03, which amends the Capital Improvements Element. On the same date, just before it adopted Ordinance 2017-3, the City adopted Ordinance 2016-23, which adopts an updated capital improvement schedule. Only Ordinance 2017-03 is being challenged.

5. Among other changes, Ordinance 2017-03 simply removes the outdated 2010 through 2015 version of the capital improvement schedule. Ordinance 2016-23 adds a new schedule for fiscal years 2017 through 2021. The new schedule identifies projects by type and estimated cost and ranks them based on an evaluation and priority process referenced in the Plan. The schedule includes, among others, public facilities, capital improvements, and transportation projects. The DEO reviewed both Ordinances and found no provision that necessitated a challenge to that action.

6. Petitioner contends the amended Capital Improvements Element does not include all components required by section 163.3177(3)(a)2., 4., and 5. He also contends the amendments are internally inconsistent with other provisions of the Plan because the Plan allegedly no longer contains a capital improvement schedule.

7. Ordinance 2016-23 was adopted outside of the plan amendment process pursuant to section 163.3177(3)(b), which provides in part that "[m]odifications to update the 5-year

capital improvement schedule may be accomplished by ordinance and may not be deemed to be amendments to the local comprehensive plan." Because it is not deemed to be an amendment to the Plan, the new schedule is not subject to an in compliance challenge. It is fair to assume this is why Petitioner initiated this proceeding.

8. Petitioner contends that, notwithstanding the above statute, all components of the Capital Improvements Element must be included in the Element itself and not in a separate ordinance. On the other hand, the City and Intervenors argue the statute specifically allows a local government to use this process to update its schedule of capital improvement and it does not render the Plan out of compliance.

#### CONCLUSIONS OF LAW

9. 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). Petitioner and Intervenors are affected persons within the meaning of the law.

10. Plan amendments adopted under the expedited state review process are sent directly to reviewing agencies, including the DEO, that have 30 days to send comments within their respective areas of expertise back to the local government. In this case, the record shows that no adverse comments were made by the DEO or other reviewing agencies.

11. "In compliance" means that a plan amendment is consistent with the requirements of section 163.3177 and other statutes not relevant here. § 163.3184(1)(b), Fla. Stat.

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

13. There are no facts in dispute. The only issue requiring resolution, and one not addressed in any prior case, is whether section 163.3177(3)(b) permits a local government to update its five-year capital improvement schedule by separate ordinance without rendering the Plan out of compliance. That subsection reads as follows:

(b) The capital improvements element must be reviewed by the local government on an annual basis. Modifications to update the 5-year capital improvement schedule may be accomplished by ordinance and may not be deemed to be amendments to the local comprehensive plan.

14. The essence of Petitioner's argument is that the five-year capital improvement schedule must be updated through the regular comprehensive plan amendment process, and not by

separate ordinance. Otherwise, he argues the Capital Improvements Element lacks a required component and is not in compliance.

15. Petitioner's argument produces an absurd result and would render the statute a nullity. It would mean the process described in section 163.3177(3)(b) could never be used by a local government because this would result in the Capital Improvements Element lacking all required components.

16. By adopting this statutory scheme, the Legislature obviously intended to give local governments the flexibility of annually updating their schedules without following the rigors of the plan amendment process. The City's interpretation of the law is more reasonable than Petitioner's and is hereby accepted.

17. In summary, the combined effect of both Ordinances is that the Plan contains a five-year schedule of capital improvements. Accordingly, the challenged plan amendment is fairly debatable and in compliance.

18. Jurisdiction is retained herein for the limited purpose of considering the City's Motion for Attorney's Fees and Costs pursuant to section 163.3184(9) on the theory the initial pleading is not a good faith filing.

#### 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 finding the amendment adopted by Ordinance 2017-03 to be in compliance.

DONE AND ENTERED this 29th day of August, 2017, in Tallahassee, Leon County, Florida.



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D. R. ALEXANDER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of August, 2017.

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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 Department of Economic Opportunity.