

LEON COUNTY
BOARD OF COUNTY COMMISSIONERS

MOORE POND HOMEOWNERS
ASSOCIATION, INC., AND OX
BOTTOM MANOR COMMUNITY
ASSOCIATION, INC.,

Petitioners,

Leon County Project ID# LSP150035
DOAH CASE NO. 17-5082

vs.

LEON COUNTY, FLORIDA AND
GOLDEN OAK LAND GROUP, LLC,

Respondents.

FINAL ORDER

An Administrative Law Judge with the Division of Administrative Hearings (“DOAH”), serving as a special master for purposes of the quasi-judicial hearing prescribed by section 10-7.414, Leon County Land Development Code, submitted a Recommended Order (“RO”), on December 26, 2017, to the Leon County Board of County Commissioners (“Board”) in the above-captioned proceeding. This proceeding is an appeal from the Leon County Development Review Committee’s (“DRC”) preliminary conditional approval of a site and development plan for the Brookside Village Residential Subdivision, Leon County Project ID No. LSP 150035, by Moore Pond Homeowners Association, Inc. and Ox Bottom Manor Community Association, Inc. (collectively “Petitioners”). As described in the RO, the proposed project is a 61-lot detached single-family residential subdivision to be located on the north side of Ox Bottom Road in Leon County (“Project”). Other details about the Project are set out in the RO. The RO finds that the Project is consistent with all requirements for approval, and recommends that the Board enter a

final order approving the Project, subject to the conditions outlined by the DRC in its written preliminary decision dated August 18, 2017.

The RO advised that all parties had the right to file written exceptions within 10 days from the date of the RO, pursuant to section 10-7.414(K), Leon County Land Development Code. On January 5, 2018, Leon County ("County"), although agreeing with the ultimate findings and conclusions of law, and the recommendation contained in the RO, filed three exceptions to the RO seeking modification or clarification and technical revisions to certain elements of the RO. These exceptions were timely received. No other exceptions were filed by any other party, including Petitioners and the Applicant, Golden Oak Land Group, LLC ("Golden Oak"). This matter is now before the Board for review of the RO and the exceptions, as provided in section 10-7.415, Leon County Land Development Code. Pursuant to the County's Land Development Code, a duly noticed public hearing before the Board was held on January 23, 2018. All parties who participated in the quasi-judicial hearing before DOAH, including Petitioners, Golden Oak, and the County, were given the opportunity for oral argument.

The hearing before the Board is limited to matters of record and argument based on the record. §10-7.415(E), Leon County Land Development Code. No new evidence may be presented. Id.

As set forth in the County's Land Development Code, the Board of County Commissioners "is bound by the special master's findings of fact unless the findings of fact are not supported by competent substantial evidence in the record before the special master." §10-7.415(H), Leon County Land Development Code. However, the Board "may modify the conclusions of law if it finds that the special master's application or interpretation of law is erroneous." Id. Ultimately, the Board must approve, approve with conditions, or deny the Project. Id. The label assigned a

statement is not dispositive as to whether it is a finding of fact or conclusion of law. Kinney v. Dep't of State, 501 So. 2d 129 (Fla. 5th DCA 1987); Goin v. Comm. on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995). Conclusions of law labeled as findings of fact, and findings labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

RULINGS ON EXCEPTIONS

The County's Exception 1

Paragraph 19 of the RO reads as follows:

The witnesses for the County and Golden Oak never acknowledged the reasonableness of Petitioners' claim of incompatibility or the notion that owners of large houses on large lots would object to having on their border a row of small houses on small lots. However, the objection of Moore Pond and Ox Bottom Manor residents was foreseeable.

The County asserts that Paragraph 19 of the RO should be stricken, as not supported by competent substantial evidence, asserting that the undisputed record evidence supports that the County and the applicant both acknowledged and analyzed the objections of incompatibility of neighboring property owners during the review of the Project, as acknowledged in other paragraphs of the RO, and as supported by the undisputed record evidence. The County also asserts that whether these objections were foreseeable or not has no legal relevance.

The County's interpretation of Paragraph 19 does not appear to be consistent with the clear wording of the RO. The RO does not say that the witnesses for the County and the Petitioners ignored Petitioners' claim of incompatibility or the notion that owners of large houses on large lots would object to having on their border a row of small houses on small lots. Paragraph 19 states that the witnesses for the County and Golden Oak never acknowledged the *reasonableness* of Petitioners' claim of incompatibility or the notion that owners of large houses on large lots would

object to having on their border a row of small houses on small lots. Clearly, the RO recognizes that the County, though not required to do so, acknowledged and analyzed the objections of incompatibility of neighboring property owners during the review of the Project as discussed at length in the RO. See, e.g., Finding of Fact Number 28. To acknowledge the *reasonableness* of Petitioners' incompatibility argument would assume agreement with its applicability in this instance, which, understandably, the RO finds was never conceded.

The last sentence of Paragraph 19 states that the objection of Moore Pond and Ox Bottom Manor residents was foreseeable. The Board agrees with the County that the foreseeability of the Moore Pond and Ox Bottom Manor residents' objection has no legal relevance. However, it serves no purpose to strike the findings stated in Paragraph 19, nor does it serve any purpose to examine whether they are based on competent, substantial evidence, as they have no impact on the outcome of the RO and have no legal significance, as evidenced by the Conclusions of Law of the RO.

For the reasons set forth above, Exception 1 is DENIED.

The County's Exception 2

The County takes exception to paragraphs 30 and 31 of the RO which read as follows:

30. Respondents' compatibility analyses were based in part on legal factors. For example, it was explained that under the Comp Plan, residential density is always applied as gross density rather than net density. This policy is reasonable because it encourages clustering and compact development which helps achieve important objectives of the Comp Plan, such as the protection of sensitive environmental features. However, it does not follow that because clustering has benefits, it cannot cause incompatibility.

31. Clustering is a well-established growth management technique, despite the fact that clustering can cause some adverse impacts when it increases densities and intensities on the border with adjoining land uses. Such impacts are addressed with buffer requirements. This approach strikes a reasonable balance of the Comp Plan's goals, objectives, and policies. If the buffer requirements are

inadequate, as Petitioners claim, that is an issue that cannot be addressed here.

The County is not seeking to strike these paragraphs. Rather, the County seeks to clarify that both the Comprehensive Plan and the Land Development Code define density based on gross density, not net density. The County also seeks clarification that there is no competent substantial evidence in the present case of adverse impacts or incompatibility with regard to the clustering of the lots and that the issue is not whether the interpretation of density is reasonable where the calculation is specifically defined in the Comprehensive Plan and the Land Development Code. The County asserts that to the extent these paragraphs can be interpreted as making a determination regarding the presence of adverse impacts based on the Project or suggest that there was an increase in density or intensity based on clustering, such findings are not supported by competent substantial evidence, or the County's Comprehensive Plan and Land Development Code. Finally, the County seeks clarification that the provided buffer exceeds the requirements of the Comprehensive Plan and Land Development Code.

The County's second Exception requesting a clarification of these two paragraphs is GRANTED as further described below. With one exception, the County's concern about a possible interpretation of Paragraphs 30 and 31 in a manner that contravenes other findings and conclusions in the rest of the RO does not appear to be consistent with the clear wording of these two paragraphs, nor of the totality of the RO. The paragraphs in question comment about principles that are generally established in the field of land planning and specifically acknowledge the consistent application of gross density parameters to residential density compatibility determinations in Leon County. They also do not apply what would be an unauthorized "reasonableness" balancing test to the specific facts of this case.

That said, the last sentence of paragraph 30, which states hypothetically, "However, it does not follow that because clustering has benefits, it cannot cause incompatibility" is stricken. To have relevance in the scenario before the Board, incompatibility caused by clustering would need to be determined by comparing the facts to an applicable standard. No such standard applies in this case. That the Project involves clustering is not relevant to the application of the standards of the Comprehensive Plan or Land Development Code to the disputed issues addressed in this proceeding. Thus, in a determination of allowable densities in adjacent low density Residential Preservation projects such as exist and are proposed here, there would be no legal basis to entertain the question of whether clustering has or has not occurred or how it proposes to be undertaken. Therefore, the hypothetical statement that clustering can result in incompatibility in land use planning generally has no relevance herein.

In summary with regard to the striking of the above-quoted sentence, clustering and its effects cannot be used to evaluate compatibility that would affect the outcome in this particular instance of placing two low density residential projects adjacent to one another. Compatibility is determined by other parameters set forth in the Comprehensive Plan and Land Development Code as explained in the RO. There is no applicable provision implementing an evaluation of clustering as a standard for the circumstances presently before the Board.

The sentence is stricken principally to avoid any confusion about its applicability to the Project. Though appearing within the section of the RO called Findings of Fact, this statement is not a finding of fact. At best, it is a commentary on possible consequences of clustering as a land use planning tool in general, not specifically applicable in the evaluation of compatibility of adjacent low density Residential Preservation projects in Leon County, which the RO correctly

effectuates. Therefore, a review of the record to ascertain whether competent, substantial evidence exists to support the stricken sentence is unnecessary.

Additionally, the County's Exception 2 is further granted, to the extent it seeks clarification that in the case of the Project, the RO: 1) makes no finding that there are adverse impacts to surrounding properties which would lead to any incompatibility under the County's Comprehensive Plan or Land Development Code; and 2) makes no finding that there was a prohibited increase in the permitted densities or intensities allowable under the County's Comprehensive Plan and Land Development Code. To the contrary, the RO acknowledges that the Project meets all density standards and the buffers exceed the requirements under the County's Comprehensive Plan and Land Development Code. With that clarification, it is not necessary to strike the rest of the two paragraphs in question nor to determine whether they are based on competent substantial evidence. They stand as modified by striking the last sentence of Paragraph 30, with the additional clarification provided herein.

The County's Exception 3:

The County proposes certain technical revisions/clarifications to the RO, paragraphs 10, 20, and 29. The County's Exception 3 is GRANTED, and the following technical corrections are made to the RO:

The third sentence of Paragraph 10 is corrected only as a clarification, to read: "A portion of the buffers would include a berm and privacy fence, as provided in the record, in sheet 21 of the site plan." This clarification is consistent with the finding of the RO that the buffers would include a berm and privacy fence.

The reference in Paragraph 20 to "Oak Pond" is corrected to the name of the applicant, "Golden Oak."

The reference in Paragraph 29 to "Consistency Code" is corrected to the "Land Development Code."

Additional Correction by the Board:

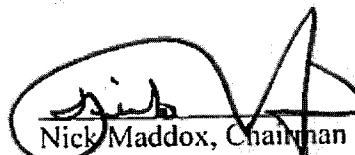
Additionally, the reference to "section 10-7.617" found in Paragraph 34, which is a typographical error, is corrected to read "section 10-6.617," making it consistent with the proper citation, as listed in Paragraph 32.

ORDER

IT IS THEREFORE ORDERED as follows:

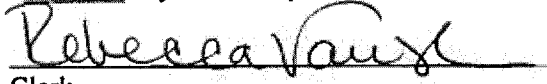
1. The findings and fact and conclusions of law in the Recommended Order, except as modified above, are ADOPTED. The Recommended Order is incorporated by reference and made a part hereof as Exhibit A.
2. The Administrative Law Judge's recommendation is ACCEPTED.
3. The Leon County Board of County Commissioners enters this Final Order, approving the Project, subject to the conditions outlined by the Development Review Committee in its written preliminary decision dated August 18, 2017.

APPROVED by the Board and EXECUTED by the Chairman on the 30 day of January 2018.


Nick Maddox, Chairman
Board of County Commissioners

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that this Final Order has been filed with the undersigned Clerk of the Board of County Commissioners, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 30th day of January, 2018.


Clerk

By Electronic Mail:

Justin J. Givens, Esquire
Jeremy V. Anderson, Esquire
Anderson & Givens, P.A.
1689 Mahan Center Boulevard, Suite B
Tallahassee, Florida 32308
jgivens@andersongivens.com
janderson@andersongivens.com
Attorneys for Petitioners, Moore Pond
Homeowners Association, Inc. and
Ox Bottom Manor Community Association,
Inc.

Gary K. Hunter, Jr., Esquire
Erin J. Tilton, Esquire
Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
garyh@hgslaw.com
erint@hgslaw.com
Attorneys for Respondent
Golden Oak Land Group, LLC

Gregory T. Stewart
Carly J. Schrader
Kerry A. Parsons
Nabors, Giblin, & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
gstewart@ngnlaw.com
cschrader@ngnlaw.com
kparsons@ngnlaw.com
legal-admin@ngnlaw.com
Attorneys for Respondent
Leon County

Jessica M. Icerman
Assistant County Attorney
Leon County
301 South Monroe Street, Room 202
Tallahassee, Florida 32301
icermanj@leoncountyfl.gov

By U.S. Mail:

Alex Nakis
6036 Heartland Circle
Tallahassee, Florida 32312

Mark Newman
6015 Quailridge Drive
Tallahassee, Florida 32312

Gene Sherron
6131 Heartland Circle
Tallahassee, Florida 32312